

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

\_\_\_\_\_  
In the Matter of )  
  )  
TARGET CORPORATION )  
\_\_\_\_\_)

CPSC Docket No. 09-C0037

SETTLEMENT AGREEMENT AND ORDER

1. In accordance with 16 C.F.R. § 1118.20, Target Corporation ("Target") and the staff ("Staff") of the United States Consumer Product Safety Commission ("CPSC" or the "Commission") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle the Staff's allegations set forth below.

PARTIES

2. The Commission is an independent federal regulatory agency established pursuant to the Consumer Product Safety Act, 15 U.S.C. §§ 2051 – 2089 ("CPSA"). The Commission is responsible for the enforcement of the CPSA.

3. Target is a corporation organized and existing under the laws of Minnesota, with its principal offices located in Minneapolis, Minnesota. At all times relevant hereto, Target imported and sold toys and children's products.

STAFF ALLEGATIONS

4. From May 2006 through October 2006, Target imported into the United States approximately 156,300 units of Various Kool Toyz children's products consisting of the following models: Truck Carry Case; Tiny Playground Set/Dream House Play Set; Discovery Dinosaur Habitat; Air, Land and Sea Defender Play Set; and the Tank and Helicopter Action Figure Play Set ("Kool

Toyz"). Target sold the Kool Toyz to consumers at retail stores nationwide owned or operated by Target from July 2006 through September 2006 for between \$10 and \$20 per unit.

5. On approximately November 2006, Target imported into the United States about 5,000 Anima - Bamboo Collection Games ("Collection Games") units. Target sold the Collection Games to consumers at retail stores nationwide owned or operated by Target from approximately December 2006 through April 2007 for \$10 per unit.

6. From June 2006 through June 2007, Target imported into the United States about 350,000 units of the Happy Giddy Gardening Tools ("Toy Tools"). Target sold the Toy Tools to consumers at retail stores nationwide owned or operated by Target from approximately August 2006 through August 2007 for between \$3 and \$10 per unit.

7. From June 2007 through August 2007, Target imported into the United States about 1900 units of Sunny Patch Chairs ("Toy Chairs"). Target sold the Toy Chairs to consumers at retail stores nationwide owned or operated by Target from approximately June 2007 through August 2007 for about \$10 per unit.

8. The Kool Toyz, Collection Games, Toy Tools and Toy Chairs (collectively, "Target Products") are "consumer products," and, at all times relevant hereto, Target was a "manufacturer" and/or "retailer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA section 3(a)(3), (5), (8), (11) and (13), 15 U.S.C. §§ 2052(a)(3), (5), (8), (11) and (13).

9. The Target Products are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products bearing Lead-Containing Paint, 16 C.F.R. Part 1303 (the "Ban"). Under the Ban, toys and other children's articles must not bear "lead-containing paint," defined as paint or

other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 C.F.R. § 1303.2(b)(1).

10. On October 6, 2006, Target submitted a Full Report to CPSC containing information that it had commissioned an independent laboratory to conduct testing for the presence of lead in surface coatings on multiple models of the Kool Toyz in response to a consumer complaint that parts of the product were breaking. As expressed in several test reports, the test results demonstrated that the samples of the Kool Toyz contained a total lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

11. On April 17, 2007, Target submitted a Full Report to CPSC containing information that it had commissioned an independent laboratory to conduct testing of samples for the presence of lead in surface coatings on multiple models of the Collection Games from a store audit. As expressed in several test reports, the test results demonstrated that the samples of the Collection Games contained lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

12. On August 10, 2007, the Staff informed Target that it had tested a store sample of Toy Tools using the Association of Official Analytical Chemists ("AOAC") method 974.02 lead analysis of paint which demonstrated that orange surface coating on the tested sample contained a total lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

13. On September 14, 2007, Target submitted a Full Report to CPSC containing information that it had commissioned an independent laboratory to conduct testing of store samples of the Toy Chairs. As expressed in its test reports, the test result demonstrated that the sample of the Toy Chairs contained lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

14. On November 15, 2006, the Commission and Target announced a consumer-level recall of about 156,300 units of the Kool Toyz because "[s]ome of the toys contain lead paint, which is toxic if ingested by young children and can cause adverse health effects." On May 2, 2007, the

Commission and Target announced a consumer-level recall of about 5,000 units of Collection Games because "[t]he toys in the bamboo game sets could contain lead paint, which is toxic if ingested by young children and can cause adverse health effects." On September 26, 2007, the Commission and Target announced a consumer-level recall of about 350,000 Toy Tools and Toy Chairs because "[t]he surface paint on the recalled gardening tools and chairs contains excessive levels of lead, violating the federal lead paint standard."

15. Although Target reported no incidents or injuries associated with the Kool Toyz, Collection Games, Toy Tools and Toys Chairs, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

16. The Kool Toyz, Collection Games, Toy Tools and Toy Chairs constitute "banned hazardous products" under CPSA section 8 and the Ban, 15 U.S.C. § 2057 and 16 C.F.R. §§1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the of dried paint film. Between May 2006 and August 2007, Target sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Kool Toyz, Collection Games, Toy Tools and Toy Chairs, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1) Target committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

17. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Target is subject to civil penalties for the aforementioned violations.

### TARGET'S RESPONSIVE ALLEGATIONS

18. Target denies the Staff's allegations set forth above that it violated the CPSA or that it failed to take adequate action to ensure that none of its products contained excessive levels of lead-containing paint.

19. At all times relevant to this matter, Target's quality assurance procedures were reasonable and satisfied the standard of care. Target's knowledge when the subject products were imported and offered for sale was that they complied with the lead paint standard. Notwithstanding satisfactory pre-production test results, certain units were subsequently found to contain impermissible levels of lead paint.

20. Target notified CPSC of the Kool Toyz and Collection Games issues promptly upon discovering them. CPSC discovered the Toy Tools/Toy Chairs issue and brought it to Target's attention. After promptly investigating the facts, Target voluntarily conducted each of the three subject product recalls in cooperation with CPSC.

21. Before the Target Products were manufactured, Target had already begun implementing Multi-Stage Testing ("MST") and a Quality Assurance Initiative as part of its overall process designed to help ensure the quality and safety of the products that Target sells. Target enhanced its procedures by addressing through MST the monitoring of product quality both before and during production by conducting three stages of testing -- pre-production, top of production, and ongoing random testing of production units.

### AGREEMENT OF THE PARTIES

22. Under the CPSA, the Commission has jurisdiction over this matter and over Target.

23. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Target, or a determination by the Commission, that Target has knowingly violated the CPSA.

24. In settlement of the Staff's allegations, Target shall pay a civil penalty in the amount of six-hundred thousand dollars (\$600,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

25. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the *Federal Register*.

26. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Target knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Target failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

27. The Commission may publicize the terms of the Agreement and Order.

28. The Agreement and Order shall apply to, and be binding upon, Target and each of its successors and assigns.

29. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Target and each of its successors and assigns to appropriate legal action.

30. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or

otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

31. If after the effective date hereof, any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Target agree that severing the provision materially affects the purpose of the Agreement and Order.

TARGET CORPORATION

Dated: 9.17.09

By: Stacia J. Andersen  
Stacia Andersen, President  
Target Sourcing Services  
1000 Nicollet Mall  
Minneapolis, MN 55403

Dated: 9/17/09

By: Eric A. Rubel  
Eric A. Rubel, Esq.  
Arnold & Porter LLP  
555 Twelfth Street, NW  
Washington, DC 20004-1206  
Counsel for Target Corporation

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
STAFF

Cheryl A. Falvey  
General Counsel  
Office of the General Counsel

Ronald G. Yelenik  
Assistant General Counsel, Division of Compliance  
Office of the General Counsel

Dated: 9/17/09

By: Sean R. Ward  
Sean R. Ward  
Trial Attorney, Division of Compliance  
Office of the General Counsel



Upon the failure of Target to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Target at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 30<sup>th</sup> day of September,  
2009.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary  
U.S. Consumer Product Safety Commission