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**FILED**

NOV 10 2009

THOMAS R. OLIVIERI, P.J.Ch.

By: Jah-Juin Ho  
Deputy Attorney General  
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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
HUDSON COUNTY  
DOCKET NO. HUD-C-133-08

ANNE MILGRAM, Attorney General of the State of New Jersey, DAVID M. SZUCHMAN, Director of the New Jersey Division of Consumer Affairs, and LOUIS E. GREENLEAF, Superintendent of the State of New Jersey, Office of Weights and Measures,

Plaintiffs,

v.

TARGET CORPORATION OF MINNESOTA, JANE AND JOHN DOES 1-20, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of TARGET CORPORATION OF MINNESOTA, and XYZ CORPORATIONS 1-20,

Defendants.

Civil Action

**FINAL CONSENT JUDGMENT**

The Parties to this Action and Final Consent Judgment ("Parties") are plaintiffs Anne Milgram, Attorney General of the State of New Jersey, David M. Szuchman, Director of the New Jersey Division of Consumer Affairs, and Louis E. Greenleaf,

Superintendent of the New Jersey Office of Weights and Measures (collectively, "Plaintiffs") and defendant Target Corporation of Minnesota ("Defendant"). As evidenced by their signatures below, the Parties do voluntarily consent to the entry of this Final Consent Judgment ("Consent Judgment") and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

**IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:**

**1. JURISDICTION**

1.1 The Parties admit jurisdiction of this Court over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to this Court, at any time, for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

**2. VENUE**

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Hudson County.

**3. EFFECTIVE DATE**

3.1 This Consent Judgment shall be effective on the date that it is entered with the Court ("Effective Date").

#### 4. DEFINITIONS

As used in this Consent Judgment, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

4.1 "Action" shall refer to the matter entitled Anne Milgram, Attorney General of the State of New Jersey, David M. Szuchman, Director of the New Jersey Division of Consumer Affairs, and Louis E. Greenleaf, Superintendent of the State of New Jersey, Office of Weights and Measures v. Target Corporation of Minnesota, Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. HUD-C-133-08, and all pleadings and proceedings related thereto, including the Complaint, filed September 3, 2008.

4.2 "Advertising Regulations" shall refer to the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq.

4.3 "Attorney General" shall refer to the Attorney General of the State of New Jersey (or designated representative) and the Office of the Attorney General.

4.4 "Bicycle Safety Act" shall refer to the Act Concerning Bicycle and Motorized Bicycle Regulation, N.J.S.A. 39:4-10.3 et seq.

4.5 "Bicycle Safety Regulations" shall refer to the Regulations Governing Toy and Bicycle Safety, N.J.A.C. 13:45A-24.1 et seq.

4.6 "CFA" shall refer to the New Jersey Consumer Fraud Act of 1960, as amended, N.J.S.A. 56:8-1 et seq.

4.7 "CFA Regulations" shall refer to the regulations promulgated pursuant to the CFA, N.J.A.C. 13:45A-1 et seq.

4.8 "Consumer" shall refer to any Person who is offered Merchandise for Sale.

4.9 "Conspicuously" shall mean a statement that, regardless of the medium in which it is made, is presented in such type, size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

4.10 "Division" shall refer to the New Jersey Division of Consumer Affairs.

4.11 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c) and/or N.J.A.C. 13:45A-9.1 and includes, but is not limited to, infant formula, non-prescription drugs, health and beauty aids, cosmetics, clothing, school and stationary supplies, electronics and music and entertainment products.

4.12 "New Jersey" shall refer to the State of New Jersey.

4.13 "OW&M" shall refer to the State of New Jersey, Office of Weights and Measures.

4.14 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

4.15 "Raincheck Act" shall refer to the Raincheck Policy Disclosure Act, N.J.S.A. 56:8-2.28 et seq.

4.16 "Represent" means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages or any other manner or means by which meaning might be conveyed. This definition

applies to other forms of the word "Represent" including, without limitation, "Representation" and "Misrepresent."

4.17 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e).

4.18 "State" shall refer to the State of New Jersey.

4.19 "Target Stores" shall refer to the retail locations operated by Defendant in the State.

4.20 "Weights and Measures Act" shall refer to the Weights and Measures Act, N.J.S.A. 51:1-1 et seq.

### **5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES**

5.1 Defendant shall not engage in any unfair and/or deceptive acts or practices in the conduct of its business in the State and shall comply with such State and/or Federal laws, rules and regulations, as now constituted or as may hereinafter be amended, which are applicable to the conduct of its business in the State including, but not limited to, the CFA, the CFA Regulations, the Weights and Measures Act, the Raincheck Act, the Advertising Regulations, the Bicycle Safety Act and the Bicycle Safety Regulations.

5.2 Defendant shall not sell or offer for Sale to any Person any non-prescription drug and/or infant formula beyond the expiration date, in accordance with N.J.S.A. 56:8-2.27.

5.3 Defendant shall check the expiration dates of all non-prescription drugs and/or infant formula before such Merchandise is displayed or otherwise offered for Sale.

5.4 Defendant shall check the expiration dates of all non-prescription drugs and/or infant formula on a weekly basis while such Merchandise is displayed or otherwise offered for Sale.

5.5 Defendant shall arrange for the destruction or return to the manufacturer or supplier of any non-prescription drugs and/or infant formula that is removed from any Target Stores in accordance with Section 5.2.

5.6 Defendant shall not sell or offer for Sale Merchandise at a price that exceeds the price posted at the point of display or otherwise.

5.7 Defendant shall not Misrepresent to Consumers, at the point of display or otherwise, the price of Merchandise offered for Sale.

5.8 Defendant shall not Misrepresent the price of any Merchandise sold, offered, exposed or Advertised for Sale by weight, measure, count or time, or Represent the price in a manner calculated or tending to mislead or in any way deceive a Person, in accordance with the Weights and Measures Act, N.J.S.A. 51:1-97(a)(4).

5.9 Defendant shall not sell, attempt to sell or offer for Sale any Merchandise at any Target Stores unless the total selling price of such Merchandise is plainly marked by a stamp, tag, label or sign affixed to the Merchandise or located at the point where the Merchandise is offered for Sale, in accordance with N.J.S.A. 56:8-2.5.

5.10 In any Target Stores that offer rainchecks, Defendant shall Conspicuously post its raincheck policy, in accordance with the Raincheck Act, N.J.S.A. 56:8-2.30.

5.11 Defendant shall maintain and offer for immediate purchase Advertised Merchandise in a quantity sufficient to meet reasonably anticipated Consumer demand, in accordance with the Advertising Regulations, N.J.A.C. 13:45A-9.2(a)(1). Advertising for Merchandise for which Consumer demand cannot be accurately anticipated or for which supply does not equal three (3) days anticipated demand shall satisfy this Consent Judgment if such Advertising includes the statement: "Quantities limited."

5.12 In any Target Store in which bicycles are sold or offered for Sale, Defendant shall post the sign required by the Bicycle Safety Act, N.J.S.A. 39:4-10.3(a).

5.13 In any Target Store in which bicycles are sold or offered for Sale, Defendant shall post the bicycle safety statement promoting the use of helmets as required by the Bicycle Safety Regulations, N.J.A.C. 13:45a-24.4.

## 6. SETTLEMENT PAYMENT

6.1 Within fifteen (15) days of the Effective Date, Defendant shall pay Three Hundred Seventy-Five Thousand and 00/100 Dollars (\$375,000.00) (the "Settlement Payment").

6.2 From the Settlement Payment, Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) shall comprise civil penalties pursuant to N.J.S.A. 56:8-13.

6.3 From the Settlement Payment, Ten Thousand and 00/100 Dollars (\$10,000.00) shall comprise reimbursement for Plaintiffs' attorneys' fees pursuant to N.J.S.A. 56:8-19, and Fifteen Thousand and 00/100 Dollars (\$15,000.00) shall comprise reimbursement for Plaintiffs' investigative costs pursuant to N.J.S.A. 56:8-11.

6.4 Defendant shall make the Settlement Payment by a certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and forwarded to:

Jah-Juin Ho, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street-5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101

6.5 Upon making the Settlement Payment, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the

monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

## **7. GENERAL PROVISIONS**

7.1 This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

7.2 This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State.

7.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment, and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

7.4 This Consent Judgment contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of Plaintiffs and Defendant.

7.5 Except as otherwise explicitly provided in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

7.6 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

7.7 This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power, or authority under this Consent Judgment be used to avoid compliance with this Consent Judgment.



7.8 This Consent Judgment shall be binding upon Defendant, as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns.

7.9 Nothing in this Consent Judgment shall preclude the right of action by any Person not a Party hereto.

7.10 This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment, nor any action taken hereunder, shall constitute or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Defendant; or (b) an admission by Defendant that any of its their acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate any of the Consumer protection laws of the State. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Judgment; or (b) any action or proceeding involving a Released Claim (as defined in Section 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

7.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Judgment.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 The Parties Represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

8.2 Defendant Represents and warrants that it shall maintain uniform policies for the periodic inspection of non-prescription drugs and/or infant formula to ensure that such Merchandise is not displayed, offered for Sale and/or sold beyond its expiration date.

8.3 Defendant Represents and warrants that it shall maintain uniform policies for the removal from retail Sale of any non-prescription drugs and/or infant formula beyond its expiration date.

8.4 Defendant Represents and warrants that at present it employs a procedure in Target Stores whereby it monitors for expired Merchandise and proper stock rotation and that it remediates all exceptions found. Defendant further Represents and warrants that it monitors for sustained compliance on at least a quarterly basis. It shall not be a breach of this Consent Judgment for Defendant to revise this procedure in a manner that comports with State law.

8.5 Defendant Represents and warrants that it shall maintain uniform policies for the destruction or return to the manufacturer or supplier of any non-prescription drugs and/or infant formula that are removed from Target Stores in accordance with Sections 5.2 and 5.4.

8.6 Defendant Represents and warrants that at present it employs a procedure in Target Stores whereby it uses a Price Challenge review process and makes a good-faith effort to correct any pricing discrepancies upon learning of same. It shall not be a breach

of this Consent Judgment for Defendant to revise this procedure in a manner that comports with State law.

8.7 Defendant Represents and warrants that at present it employs a procedure in Target Stores whereby it completes and/or corrects price changes in each department weekly. It shall not be a breach of this Consent Judgment for Defendant to revise this procedure in a manner that comports with State law.

8.8 Defendant Represents and warrants that at present it employs a procedure in Target Stores whereby it monitors price accuracy for promotional Merchandise on a weekly basis. It shall not be a breach of this Consent Judgment for Defendant to revise this procedure in a manner that comports with State law.

8.9 Defendant Represents and warrants that it shall maintain uniform policies for monitoring the price accuracy of Merchandise at Target Stores to ensure that such Merchandise is not displayed, offered for Sale and/or sold at a price that exceeds the price posted at the point of display or otherwise.

8.10 Defendant Represents and warrants that, for a period of two (2) years from the Effective Date, it shall create and fill a new senior management-level position, entitled Group Pricing Compliance Specialist (GPCS), whose territory shall include all Target Stores in the State, and whose duties shall include monitoring compliance with Defendant's policies and this Consent Judgment with respect to price accuracy. The GPCS may delegate duties to other employees of Defendant, appoint "backup" GPCSs, or retain third-party providers as the GPCS deems reasonable and appropriate to assist with the GPCS's responsibilities. The GPCS shall be the designated corporate contact person for inquiries from the OW&M.

8.11 Defendant Represents and warrants that, for a period of two (2) years from the Effective Date, all employees of each Target Store shall participate in initial training that will reference pricing accuracy and instruct employees how to respond to Consumer inquiries regarding pricing issues. In addition, employees designated by Defendant as Price Accuracy Team Members shall participate in training sessions not less than twice each year for a period of two (2) years from the Effective Date. Such training shall cover topics to improve price accuracy, including: (1) price accuracy awareness; (2) instructions on how to perform price accuracy best-practices and ensure that they are consistently executed; and (3) instructions on how to address price accuracy issues with Consumers.

8.12 Defendant Represents and warrants that it shall maintain uniform policies for the posting of its raincheck policy and the notification of Consumers as to when Merchandise subject to the raincheck becomes available.

8.13 Defendant Represents and warrants that it shall maintain uniform policies for the posting of a bicycle safety statement promoting the use of helmets in accordance with Section 5.13.

8.14 Defendant Represents and warrants that it shall provide managers and all other employees at Target Stores with the training and/or instruction necessary to ensure compliance with this Consent Judgment as well as all applicable State laws, regulations and rules.

## **9. RELEASE**

9.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment, and conditioned on

Defendant making the Settlement Payment in the manner specified in Section 6, Plaintiffs hereby agree to release Defendant from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs brought or could have brought prior to the Effective Date against Defendant for violations of the CFA, the CFA Regulations, the Weights and Measures Act, the Raincheck Act, the Advertising Regulations, the Bicycle Safety Act and/or the Bicycle Safety Regulations, as alleged in the Action, as well as the matters specifically addressed in this Consent Judgment (the "Released Claims").

9.2 Notwithstanding any provision of this Consent Judgment, the following do not comprise the Released Claims: (a) private rights of action; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant by any other entity or subdivision of the State.

#### **10. MONITORING FOR COMPLIANCE**

10.1 Within thirty (30) days of the Effective Date, Defendant shall submit a copy of this Consent Judgment to its Target Store GPCS. Within forty-five (45) days of the Effective Date, Defendant shall provide Plaintiffs with an acknowledgment that the above-referenced Person has been supplied with a copy of this Consent Judgment. Defendant agrees to a continued obligation to keep all of its Target Store GPCSs informed of the terms set forth herein. With respect to Target Store level managers, Defendant agrees to provide a letter-notice summarizing the material terms of this Consent Judgment.

## **11. PENALTIES FOR FAILURE TO COMPLY**

11.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

11.2 The Parties agree that any future violations by Defendant of the injunctive provisions of this Consent Judgment, the CFA, the CFA Regulations, the Weights and Measures Act, the Raincheck Act, the Advertising Regulations, the Bicycle Safety Act and/or the Bicycle Safety Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Defendant may be subjected to enhanced penalties, as provided therein, upon a Court's finding that Defendant has committed a violation of the injunctive provisions of this Consent Judgment, the CFA, the CFA Regulations, the Weights and Measures Act, the Raincheck Act, the Advertising Regulations, the Bicycle Safety Act and/or the Bicycle Safety Regulations.

## **12. COMPLIANCE WITH ALL LAWS**

12.1 Except as provided in this Consent Judgment, no provision shall be construed as:

- (a) Relieving Defendant of its obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as hereafter may be amended, or as granting permission to engage in any acts or practices prohibited by such laws, regulations or rules; or
- (b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendant pursuant to any State or Federal law, regulation or rule, as now constituted or as hereafter may be amended, or limiting or expanding any right Defendant may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

**13. NOTICES UNDER THIS CONSENT JUDGMENT**

13.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides tracking services and identification of Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Plaintiffs:

Jah-Juin Ho, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For the Defendant:

Target Law Department  
1000 Nicollet Mall - TPS 3155  
Minneapolis, MN 55403

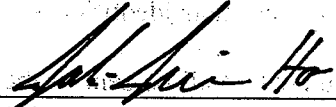
IT IS ON THE 10<sup>th</sup> DAY OF November, 2009 SO ORDERED, ADJUDGED  
AND DECREED.

  
\_\_\_\_\_  
HON. THOMAS P. OLIVIERI, P.J.C.H.

**JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:**

**FOR THE PLAINTIFFS:**

**ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY**


By:   
Jah-Juin Ho  
Deputy Attorney General

Dated: November 9, 2009

Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

**FOR THE DEFENDANT:**

**ARSENEAULT, WHIPPLE, FARMER  
FASSETT & AZZARELLO, LLP**

By:   
John Whipple, Esq.

Dated: November 6, 2009

560 Main Street  
Chatham, New Jersey 07928

**TARGET CORPORATION**

By: 

Dated: Nov. 3, 2009