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17 FOUNDATION

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 FOR THE COUNTY OF SAN FRANCISCO

20 MATEEL ENVIRONMENTAL JUSTICE  
21 FOUNDATION,,  
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23 Plaintiff,  
24  
25 v.  
26 AKERUE INDUSTRIES, LLC; et al.,,  
27  
28 Defendant.

Case No. CGC-10-498558  
**CONSENT JUDGMENT**  
**(THE COLEMAN COMPANY, INC.)**

1 **1. INTRODUCTION**

2 1.1 On April 12, 2010, MATEEL ENVIRONMENTAL JUSTICE FOUNDATION  
3 ("Mateel") acting on behalf of itself and the general public, filed a Complaint for civil penalties  
4 and injunctive relief ("Complaint") in San Francisco County Superior Court, Case No. CGC-10-  
5 498558, against Defendant THE COLEMAN COMPANY, INC. ("Coleman" or "Defendant").  
6 The Complaint alleges, among other things, that Defendant violated provisions of the Safe  
7 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,  
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Francisco County Superior Court

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CLERK OF COURT  
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1 *et seq.* ("Proposition 65"). In particular, Mateel alleges that Coleman has knowingly and  
2 intentionally exposed persons to products, including camping stoves and other fuel burning  
3 equipment that utilize fittings and other accessible components made of brass containing lead  
4 and/or lead compounds (hereinafter "leaded brass"), which are chemicals known to the State of  
5 California to cause cancer and birth defects or other reproductive harm, without first providing a  
6 clear and reasonable warning to such individuals.

7 1.2 On December 23, 2009, a 60-Day Notice letter ("Notice Letter") was sent by  
8 Mateel to Coleman, the California Attorney General, all California District Attorneys, and all  
9 City Attorneys of every California city with populations exceeding 750,000.

10 1.3 Coleman is a business that employs ten or more persons and manufactures,  
11 distributes, and/or markets products, including camping stoves, within the State of California.  
12 Some of those products are alleged to contain brass fittings and other accessible components that  
13 contain lead and/or lead compounds. Lead and lead compounds are chemicals known to the State  
14 of California to cause cancer, and lead is a chemical known to the State of California to cause  
15 reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under specified  
16 circumstances, products containing lead and/or lead compounds that are sold or distributed in the  
17 State of California are subject to the Proposition 65 warning requirement set forth in Health and  
18 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass fittings and other  
19 components on products, including but not limited to camping stoves, manufactured, distributed,  
20 sold and/or marketed by Coleman for use in California require a warning under Proposition 65.

21 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall be  
22 defined as products that utilize leaded-brass fittings and/or contain other accessible leaded-brass  
23 components, to the extent such products are distributed and sold within the State of California,  
24 and that are manufactured, distributed, marketed and/or sold by Coleman, regardless of whether  
25 they bear Coleman labels.

26 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court has  
27 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
28 over Coleman as to the acts alleged in the Complaint, that venue is proper in the County of San

1 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement  
2 and resolution of the allegations contained in the Complaint and of all claims that were or could  
3 have been raised by any person or entity based in whole or in part, directly or indirectly, on the  
4 facts alleged therein or arising therefrom or related thereto.

5 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties  
6 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
7 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
8 shall not constitute an admission with respect to any material allegation of the Complaint, each  
9 and every allegation of which Coleman denies; nor may this Consent Judgment or compliance  
10 with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
11 Coleman or any other person or entity related to the Defendant.

12 2. **SETTLEMENT PAYMENT**

13 2.1 In settlement of all of the claims referred to in this Consent Judgment, no later than  
14 five (5) business days prior to the hearing of any motion to approve this settlement, Coleman  
15 shall pay \$20,000 to the Klamath Environmental Law Center ("KELC") to cover a portion of  
16 Mateel's attorneys' fees and costs.

17 2.2 No later than five (5) business days prior to the hearing of any motion to approve  
18 this settlement, Coleman shall pay \$6,000 to the Ecological Rights Foundation and \$6,000 to  
19 Californians for Alternatives to Toxics. Both are California non-profit environmental  
20 organizations that advocate for workers' and consumers' safety, and for awareness and reduction  
21 of toxic exposures.

22 2.3 If for any reason this settlement is not approved and the consent judgment entered  
23 within 120 days of it being signed by Defendant, any payments shall be returned.

24 3. **ENTRY OF CONSENT JUDGMENT**

25 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.  
26 Upon entry of the Consent Judgment, Coleman and Mateel waive their respective rights to a  
27 hearing or trial on the allegations of the Complaint.  
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1           **4.     MATTERS COVERED BY THIS CONSENT JUDGMENT**

2           **4.1**     This Consent Judgment is a final and binding resolution between Mateel, acting on  
3 behalf of itself and, as to the claims made in the 60 Day Notice, acting in the public interest, and  
4 Coleman, of: (i) any violation of Proposition 65 with respect to the Covered Products, and (ii)  
5 any other statutory or common law claim, to the fullest extent that any of the foregoing described  
6 in (i) or (ii) were or could have been asserted by any person or entity against Coleman based  
7 upon, arising out of or relating to Coleman's compliance with Proposition 65, or regulations  
8 promulgated thereunder, with respect to lead exposures allegedly caused by Covered Products,  
9 and any other claim based in whole or part on the facts alleged in the Complaint, whether based  
10 on actions committed by Coleman, or by any other person or entity within Coleman's chain of  
11 distribution of the Covered Products, including, but not limited to, manufacturers, distributors,  
12 wholesale or retail sellers, and any other person in the course of doing business. As to lead  
13 exposures allegedly arising from the Covered Products, compliance with the terms of this  
14 Consent Judgment resolves any issue, now and in the future, concerning compliance by Coleman  
15 and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of  
16 their manufacturers, customers, distributors, wholesalers, retailers, or any other person in the  
17 course of doing business, and the successors and assigns of any of these who may manufacture,  
18 use, maintain, distribute, market or sell Covered Products, with the current requirements of  
19 Proposition 65 as to Covered Products manufactured, distributed, marketed and/or sold by  
20 Coleman.

21           **4.2**     As to lead exposures allegedly caused by Covered Products, Mateel, acting on  
22 behalf of itself, and its agents, successors and assigns, waives all rights to institute any form of  
23 legal action, and releases all claims against Coleman and its parents, subsidiaries or affiliates,  
24 predecessors, officers, directors, employees, and all of its customers, manufacturers, distributors,  
25 wholesalers, retailers or any other person in the course of doing business, and the successors and  
26 assigns of any of them, who may manufacture, use, maintain, distribute or sell the Covered  
27 Products, whether under Proposition 65 or otherwise, arising out of or resulting from, or related  
28 directly or indirectly to, in whole or in part, the Covered Products and claims identified in

1 Mateel's Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself hereby  
2 waives any and all rights and benefits which it now has, or in the future may have, conferred upon  
3 it with respect to the Covered Products by virtue of the provisions of Section 1542 of the  
4 California Civil Code, which provides as follows:

5 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
6 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
7 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE  
8 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
9 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
10 DEBTOR."

11 Mateel understands and acknowledges that the significance and consequence of this waiver of  
12 California Civil Code Section 1542 is that even if Mateel suffers future damages arising out of or  
13 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, it  
14 will not be able to make any claim for those damages against Coleman, its parents, subsidiaries or  
15 affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers,  
16 distributors, wholesalers, retailers or any other person in the course of doing business, and the  
17 successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the  
18 Covered Products. Furthermore, Mateel acknowledges that it intends these consequences for any  
19 such claims which may exist as of the date of this release but which Mateel does not know exist,  
20 and which, if known, would materially affect its decision to enter into this Consent Judgment,  
21 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,  
22 negligence, or any other cause.

23 **5. ENFORCEMENT OF JUDGMENT**

24 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the parties  
25 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
26 San Francisco County, giving the notice required by law, enforce the terms and conditions  
27 contained herein.

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**6. MODIFICATION OF JUDGMENT**

6.1 Except as provided for in Paragraph 7.3(d), this Consent Judgment may be modified only upon written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

**7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

7.1 The brass fittings and components of Covered Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if those brass fittings and other accessible brass components that are part of the Covered Products meet the following criteria: (a) the brass alloy from which the brass fittings and components are made shall have no lead as an intentionally added constituent; and (b) the brass alloy from which the brass fittings and components are made shall have a lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). Coleman may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the brass alloy from which the brass fittings and components are made, provided such reliance is in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish good faith reliance.

7.2 Covered Products that do not meet the warning exemption standard set forth in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 below shall apply only to: (1) Covered Products that Coleman manufactures after 120 days after entry of this Consent Judgment ("the Effective Date"); and (2) Covered Products manufactured, distributed, marketed, sold or shipped for sale or use inside the State of California.

7.3 Coleman shall provide Proposition 65 warnings as follows:

- (a) Defendant Coleman shall provide either of the following warning statements:

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(1) **WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Do not place your hands in your mouth after handling the product. *Wash your hands after touching this product.*

or, where Coleman has reason to believe that chemicals listed under Proposition 65 in addition to lead are present in a Covered Product,

(2) **WARNING:** This product contains lead and other chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. Do not place your hands in your mouth after handling the product. *Wash your hands after touching this product.*

The word "WARNING" shall be in bold. The words "Wash hands after handling" shall be in bold and italicized.

(b) Where utilized as an alternative to meeting the criteria set forth in Section 7.1, Coleman shall provide the warning language set forth in subsection 7.3(a) either:

(1) with the unit package of the Covered Products. Such warning shall be prominently affixed to or printed on each Covered Product's label or package. If printed on the label itself, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Covered Product; Coleman may continue to utilize, on an ongoing basis, unit packaging containing substantively the same Proposition 65 warnings and without the additional admonitions as those set forth in paragraph 7.3(a) above, but only to the extent such packaging materials have already been printed prior to the date on which this Consent Judgment has been entered by the Court, or

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(2) in the owner's manual of a Covered Product, but only if the Covered Product: (i) may cause serious injury or bodily harm unless used as directed; (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has one or more features a consumer must read about in order to know how to program or use the Covered Product. If the warning is given in the owners manual pursuant to this subsection, it shall be located in one of the following places in the manual: the outside of the front cover; the inside of the front cover; the first page other than the cover; or the outside of the back cover. The warning shall be printed or stamped in the manual or contained in a durable label or sticker affixed to the manual in a font no smaller than the font used for other chemically-related safety warnings in the manual. Alternatively, the warning may be included in a safety warning section of the owner's manual. Coleman may continue to utilize, on an ongoing basis, owners manuals containing substantively the same Proposition 65 warnings and without the additional admonitions as those set forth in paragraph 7.3(a) above, but only to the extent such manuals have already been printed prior to the date on which this Consent Judgment has been entered by the Court. Owners manual warnings may only be allowed if the owners manual is sold in the same package and at the same time as the Covered Product and not for individual fittings sold separately.

(c) The requirements for warnings, set forth in subparagraphs (a)-(b) above are imposed pursuant to the terms of this Consent Judgment. The parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations and that they may or may not be appropriate in other circumstances.



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(d) If Proposition 65 warnings for lead or lead compounds should no longer be required, Coleman shall have no further warning obligations pursuant to this Consent Judgment. Except as provided in section 7.1 above, in the event that Coleman ceases to implement or modifies the warnings required under this Consent Judgment (because of a change in the law or otherwise), Coleman shall provide written notice to Mateel (through KELC) of its intent to do so, and of the basis for its intent, no less than thirty (30) days in advance. Mateel shall notify Coleman in writing of any objection within thirty (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

(e) If after the Effective Date, Defendant ships Covered Products to a retailer or distributor outside of California that neither provide the warnings specified in this paragraph nor meet the Reformulation Standard specified in paragraph 7.1 of this Consent Judgment ("Non-Conforming Covered Products"), and if the retailer or distributor then offers those Non-Conforming Covered Products for sale in California, then as to those Non-Conforming Covered Products, that retailer or distributor, and their customers, are not released pursuant to Sections 4.1 and 4.2 above.

(f) Nothing in this Consent Judgment shall create a limitation on enforcement of a new Proposition 65 action based on future conduct if such future conduct is not in compliance with the injunctive terms of this Consent Judgment. Nonetheless, prior to taking any action based on future conduct, plaintiff agrees to attempt to resolve the issue informally.

**8. AUTHORITY TO STIPULATE**

**8.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

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**9. RETENTION OF JURISDICTION**

9.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

**10. ENTIRE AGREEMENT**

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

**11. GOVERNING LAW**

11.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

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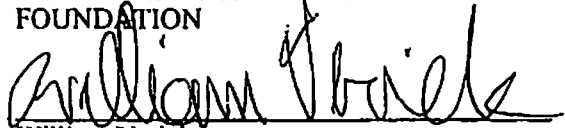
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12. **COURT APPROVAL**

12.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION



William Verick  
CEO Mateel Environmental Justice  
Foundation,  
Klamath Environmental Law Center

THE COLEMAN COMPANY, INC.

By:  
Its:

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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**12. COURT APPROVAL**

12.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

\_\_\_\_\_  
William Verick  
CEO Mateel Environmental Justice  
Foundation,  
Klamath Environmental Law Center

THE COLEMAN COMPANY, INC.

\_\_\_\_\_  
By: Pat Barnett  
Its: Sr. VP

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

CHARLOTTE WALTER WOOLARD

DATED: 8/26/10

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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