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6 CONSUMER ADVOCACY GROUP, INC.

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15 THE COLEMAN COMPANY, INC.
16 WISCONSIN PHARMACAL COMPANY, LLC
17 AIRBORNE SALES CO., INC.
18 THE SURPLUS STORE

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF LOS ANGELES

21 CONSUMER ADVOCACY GROUP, INC.,

22 Plaintiff,

23 v.

24 THE COLEMAN COMPANY, INC., *et al.*,

25 Defendants.

CASE No. BC-452176

~~Proposed~~ STIPULATED CONSENT
JUDGMENT

(*Health and Safety Code § 25249 et seq.*)

26 **1. INTRODUCTION**

27 **1.1 Plaintiff:** The Plaintiff is Consumer Advocacy Group, Inc. (“CAG” or
28 “Plaintiff”), a non-profit foundation. CAG is dedicated to, among other causes, protecting the
environment, improving human health, and supporting environmentally sound practices.

1 **1.2 Defendants:** The Defendants are The Coleman Company, Inc., Wisconsin
2 Pharmaceutical Company, LLC, Airborne Sales Company, Inc., and The Surplus Store
3 ("Defendants").

4 **1.3 The Parties:** Plaintiff and Defendants are sometimes referred to herein in the
5 singular as a "Party," and collectively as the "Parties."

6 **1.4 The Action:** This action ("Action") is brought under Proposition 65, the popular
7 name for California's Safe Drinking Water and Toxic Enforcement Act of 1986, codified at *Cal.*
8 *Health and Safety Code* Section 25249.5 *et seq.* (sometimes referred to as "the Act"). Plaintiff
9 proceeds under Section 25249.7(d) as a "person in the public interest." Solely for purposes of
10 this Consent Judgment, the Parties stipulate that Plaintiff's Notice of Intent to Sue ("Plaintiff's
11 Notice"), attached to this Consent Judgment as Exhibit A, was served upon Defendants and
12 public prosecutors, including the Attorney General and all district attorneys and city attorneys
13 authorized to prosecute an action to enforce the Act, accompanied by certificates of merit, in
14 compliance with Section 25249.7(d)(1) of the Act, and that Plaintiff's Notice alleges violations of
15 Proposition 65 against the Defendants. Plaintiff is allowed to proceed against Defendants
16 pursuant to Section 25249.7(d)(2), because none of the public prosecutors named above
17 commenced an action pursuant to Plaintiff's Notices.

18 **1.5 The Complaint:** On December 30, 2010, Plaintiff filed a complaint against
19 Defendants in the Superior Court for the City and County of Los Angeles ("the Complaint")
20 alleging that Defendants violated Proposition 65 by exposing individuals in California to the
21 chemical known as di-*n*-propyl isocinchomeronate (MGK Repellent 326) (the "Covered
22 Chemical"), which has been designated under the Act as "known to the State of California to
23 cause cancer or reproductive toxicity" within the meaning of Section 25249.8(b), without
24 providing Proposition 65 warnings to such individuals, as alleged to be required under Section
25 25249.6. According to the Complaint, the alleged exposure to the Covered Chemical occurs
26 when individuals in California use or apply the product known by the trade name Coleman®
27 Insect Repellent Long Lasting 25% DEET, which is manufactured, packaged, distributed,
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1 marketed and/or sold for use in California. This product is identified with specificity in
2 Plaintiff's Notice and the Complaint, and is referred to herein as the "Covered Product."

3 **1.6 Jurisdiction:** Solely for purposes of this Consent Judgment, the Parties stipulate
4 that the above-entitled Court has personal jurisdiction over Defendants as to the acts alleged in
5 the Action; that venue is proper in the City and County of Los Angeles; that the claims in the
6 Action present a live controversy as to the application of Proposition 65 to the Covered Product
7 and the Covered Chemical therein; that this Court has jurisdiction to enter this Consent Judgment
8 as a resolution of all claims alleged in the Action; and that the Court shall retain jurisdiction to
9 implement the Consent Judgment.

10 **1.7 The Standard for Determining Whether Proposition 65 Warnings Are**
11 **Required:** Section 25249.6 of Proposition 65 provides that "[n]o person in the course of
12 business shall knowingly and intentionally expose any individual to a chemical known to the state
13 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
14 individual, except as provided in Section 25429.10." Section 25249.10(c), under the heading
15 "Exemptions from Warning Requirement," provides that Section 25249.6 "shall not apply" to an
16 "exposure for which the person responsible can show that the exposure poses no significant risk
17 assuming lifetime exposure at the level in question for substances known to the state to cause
18 cancer, and that the exposure will have no observable effect assuming exposure at one thousand
19 (1,000) times the level in question for substances known to the state to cause reproductive
20 toxicity, based on evidence and standards of comparable scientific validity to the evidence and
21 standards which form the scientific basis for the listing of such chemical In any action
22 brought to enforce Section 25249.6, the burden of showing that an exposure meets the criteria of
23 this subdivision shall be on the defendant." Thus, Proposition 65 makes it unlawful for a person
24 subject to the Act to expose an individual in the state of California to a Proposition 65-listed
25 chemical without first providing a Proposition 65 warning, unless an exemption to this
26 requirement applies. Where the defendant asserts an exemption because the alleged exposure is
27 beneath the level that would require a warning, the burden of proof is on the defendant to
28 establish that the exemption applies.

1 **1.8 Settlement.** Plaintiff's Notice was issued to Defendants on June 21, 2010. The
2 Parties have engaged in informal discovery and settlement negotiations since that date. As a
3 result of this exchange of information, the Parties agree on some aspects of the allegations, but
4 disagree as to several other aspects, and thus disagree as to whether Defendants have violated
5 Proposition 65. Specifically, the Parties agree that the Covered Product contains the Covered
6 Chemical, and that Defendants have not distributed Proposition 65 warnings with respect to the
7 Covered Product. Defendants dispute, however, that the manufacture, packaging, distribution,
8 marketing, sale or use of the Covered Product results in the exposure of individuals in California
9 (or elsewhere) to the Covered Chemical in amounts, if any, that would require a warning under
10 Proposition 65. Defendants also assert other affirmative defenses. In support of their assertions,
11 Defendants' counsel has presented scientific evidence to demonstrate that any exposure to the
12 Covered Chemical resulting from any reasonably anticipated use of the Covered Product, in the
13 words of Section 25249.10(c), "poses no significant risk assuming lifetime exposure at the level
14 in question for substances known to the state to cause cancer, and that the exposure will have no
15 observable effect assuming exposure at one thousand (1000) times the level in question for
16 substances known to the state to cause reproductive toxicity, based on evidence and standards of
17 comparable scientific validity to the evidence and standards which form the scientific basis for
18 the listing of such chemical" Plaintiff disputes these assertions. In support of its position,
19 Plaintiff has presented evidence to dispute Defendants' evidence with respect to the Covered
20 Chemical in products similar to the Covered Product, and asserts that this evidence also
21 demonstrates that Defendants' evidence with respect to the Covered Chemical and the Covered
22 Product does not satisfy Defendants' burden under Section 25249.6. Therefore, in order to avoid
23 prolonged litigation and the waste of private and judicial resources arising from prosecuting,
24 defending, and adjudicating the issues on which the Plaintiff and Defendants disagree, the Parties
25 have agreed, subject to the approval of this Court, to compromise their disputed claims and
26 defenses, and, further, have entered into a settlement agreement, the terms of which are embodied
27 in this Consent Judgment.

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1 **1.9 No Admissions:** Neither the Consent Judgment nor any of its provisions shall be
2 construed as an admission by any Party of any fact, finding, issue of law, or violation of law,
3 including Proposition 65 or any other statute, regulation, or common law requirement related to
4 exposure to the Covered Chemical or other chemicals listed under Proposition 65 from the
5 Covered Product. By executing this Consent Judgment and agreeing to provide the relief and
6 remedies specified herein, Defendants do not admit that this Action is not pre-empted by Federal
7 law, or that Defendants have committed any violations of Proposition 65, or any other law or
8 legal duty, and, further, specifically denies that it has committed any such violations. Rather,
9 Defendants maintain that the Covered Product distributed, marketed and/or sold by Defendants in
10 California has at all times been in compliance with Proposition 65. Nothing in this Consent
11 Judgment shall prejudice, waive or impair any right, remedy or defense that Plaintiff and
12 Defendants may have, respectively, in any other present or future legal proceedings unrelated to
13 the instant matter. Defendants reserve all of their rights and defenses with regard to any claim by
14 any person under Proposition 65 or otherwise. Nevertheless, this paragraph shall not diminish or
15 otherwise affect the obligations, responsibilities, waivers, releases, and/or duties provided for
16 under this Consent Judgment.

17 **2. INJUNCTIVE RELIEF**

18 **2.1** In the spirit of settlement and compromise, and in order to promote the public
19 interest, Defendants have agreed to refrain from further sale of the Covered Product in California
20 unless the Covered Product is reformulated so that the Covered Chemical is no longer present in
21 the Covered Product.

22 **2.2** Defendants satisfy this requirement by taking such actions as may be necessary to
23 cease manufacture of the Covered Product using the Covered Chemical by the 90th day following
24 the filing date of a Notice of Entry of Order stating that this Consent Judgment has been approved
25 and become a final order of the Court ("Effective Date"). In no event shall Defendants or any
26 distributors or retailers be deemed in violation of this Consent Judgment or Proposition 65 where
27 the Covered Product subject to this Consent Judgment was manufactured by Defendants prior to
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1 the Effective Date (even if stocked in shelves, sold to consumers, or otherwise within the chain of
2 distribution after the Effective Date).

3 **3. MONETARY PAYMENTS**

4 **3.1** In settlement of this matter, Defendants have agreed to make monetary payments
5 to Plaintiff totaling \$52,000 (Fifty-Two Thousand Dollars), as described in paragraphs 3.2 and 3.3
6 below.

7 **3.2 Payment In Lieu of Civil Penalties:** Within thirty (15) days following notice of
8 approval and entry of this Consent Judgment by the Court, Defendants shall pay \$14,000
9 (Fourteen Thousand Dollars) in the form of a single check made payable to "CONSUMER
10 ADVOCACY GROUP." CAG will use said payment for such projects and purposes related to
11 environmental protection, worker health and safety, or reduction of human exposure to hazardous
12 substances (including administrative and litigation costs arising from such projects), as CAG may
13 choose. The check shall be delivered by overnight mail to: *Reuben Yeroushalmi, Esq.,*
14 *Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212.*

15 **3.3 Reimbursement of Attorneys Fees and Costs:** Within thirty (15) days following
16 notice of approval and entry of this Consent Judgment, Defendants shall pay \$38,000 (Thirty-
17 Eight Thousand Dollars) in the form of a single check made payable to "YEROUSHALMI &
18 ASSOCIATES" as reimbursement for the investigation fees and costs, testing costs, expert
19 witness fees, attorneys fees, and other litigation costs and expenses. The check shall be delivered
20 by overnight mail to: *Reuben Yeroushalmi, Esq., Yeroushalmi & Associates, 9100 Wilshire*
21 *Boulevard, Suite 610E, Beverly Hills, CA 90212.*

22 **4. WAIVER AND RELEASE OF ALL CLAIMS**

23 **4.1 Waiver And Release of Claims Against Defendants:** As to those matters raised
24 in this Action, the Complaint, or in Plaintiff's Notice and any related actions, Plaintiff hereby
25 releases each Defendant and waives any claims against each Defendant for injunctive relief or
26 damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and
27 others), costs, expenses or any other sum incurred or claimed, for any claims under Proposition
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1 65 related to the Covered Product or any related actions arising from the sale, distribution or use
2 in California of the Covered Product.

3 **4.2 Defendants' Waiver And Release Of Plaintiff:** Defendants hereby release
4 Plaintiff from and waives any claims against Plaintiff for injunctive relief or damages, penalties,
5 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
6 expenses, or any other sum incurred or claimed or which could have been claimed for matters
7 related to the Action.

8 **4.3 Matters Covered By This Consent Judgment/Release of Future Claims:** This
9 Consent Judgment is a full, final, and binding resolution between the Plaintiff, acting on behalf of
10 itself and in the interest of the public, pursuant to Health and Safety Code Section 25249.7(d), and
11 Defendants, as to all claims arising from Defendants' alleged failure to provide clear, reasonable,
12 and lawful warnings of exposure to the Covered Chemical in the Covered Product. Compliance
13 with the terms of this Consent Judgment resolves any issue, now and in the future, concerning
14 compliance by Defendants with existing requirements of Proposition 65 to provide clear and
15 reasonable warning about exposure to the Covered Chemical in the Covered Product.

16 **4.4 Waiver Of Civil Code Section 1542:** This Consent Judgment is intended as a full
17 settlement and compromise of all claims arising out of or relating to Plaintiff's Notice and/or the
18 Action regarding the Covered Product, unless expressly set forth herein. No claim is reserved as
19 between the Parties hereto, and each Party expressly waives any and all rights which it may have
20 under the provisions of Section 1542 of the *Civil Code* of the State of California, which provides:

21 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
22 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
23 **TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING**
24 **THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE**
25 **MATERIALLY AFFECTED HIS SETTLEMENT WITH THE**
26 **DEBTOR."**

27 **4.5** For purposes of this Consent Judgment, the terms "Plaintiff" and "Defendant" are
28 defined as follows: the term "Plaintiff" includes the Plaintiff as defined at paragraph 1.1 above,
and also includes its members, subsidiaries, successors, and assigns and its directors, officers,
agents, attorneys, representatives, and employees. The term "Defendant" includes the

1 Defendants, as that term is defined in paragraph 1.2 above, their corporate affiliates (including
2 any and all corporate parents and subsidiaries) and the directors, officers, agents, attorneys,
3 representatives, employees, licensors, licensees, heirs, predecessors, or successors in the
4 manufacture, distribution or sale of the Covered Product, and the assigns of any of them, their
5 suppliers, distributors, retailers, other re-sellers, if any, and any customers of any Covered
6 Product that contain the Covered Chemical.

7 **5. MODIFICATION OF CONSENT JUDGMENT**

8 This Consent Judgment may be modified from time to time by express written agreement
9 of the Parties, with the approval of the Court, or by an order of this Court in accordance with law.

10 **5.1** The Parties recognize in particular that Defendants, or any other person engaged in
11 the manufacture, distribution or sale of a Covered Product, may apply to the Office of Health
12 Hazard Assessment for a Safe Use Determination (“SUD”) indicating that a Proposition 65
13 warning is not required for the Covered Product, or a substantially similar product that contains
14 the Covered Chemical. If such person should obtain an SUD, then any Defendant shall be
15 entitled to submit evidence to CAG demonstrating that the Covered Product, or any other
16 substantially similar product used, manufactured and/or sold by a Defendant that comes within
17 the scope of the SUD, does not require a Proposition 65 warning, or that different injunctive relief
18 under Proposition 65 is appropriate.

19 **5.2** CAG and Defendants shall have ninety (90) days from the date on which a
20 Defendant submits such evidence to CAG in which to confer and decide concerning whether
21 modify the injunctive relief provisions of this Consent Judgment. If the Parties agree that the
22 Covered Product, or any other additional products used, manufactured and/or sold by Defendants,
23 comes within the scope of the SUD, then they shall jointly move the Court for such modification.

24 **5.3** If the Parties are unable to agree, then Defendants may file a motion with the
25 Court seeking the elimination or modification of the injunctive relief provisions of this Consent
26 Judgment, based on the SUD.

27 **5.4** Subsections 5.1 through 5.3 of this paragraph shall not apply to the monetary relief
28 sections of this Consent Judgment.

1 **5.5** At least fifteen (15) days in advance of its consideration by the Court, the Attorney
2 General shall be served with notice of any proposed modification to this Consent Judgment.

3 **6. ENFORCEMENT OF CONSENT JUDGMENT**

4 **6.1** The Parties may, by motion or other application before this Court, and upon notice
5 having been given to all Parties in accordance with paragraph 10 below, unless waived, enforce
6 the terms and conditions of this Consent Judgment and seek whatever fines, costs, penalties, or
7 remedies are provided by law. The prevailing party on any such motion or application shall be
8 entitled to recover reasonable attorneys' fees and costs.

9 **6.2** The Parties may enforce the terms and conditions of this Consent Judgment
10 pursuant to paragraph 6.1 only after the complaining party has first given thirty (30) days notice
11 to the Party allegedly failing to comply with the terms and conditions of the Consent Judgment,
12 and has attempted, in an open and good faith manner, to resolve such Party's alleged failure to
13 comply.

14 **7. GOVERNING LAW**

15 **7.1** The terms of this Consent Judgment shall be governed by, and construed in
16 accordance with, the laws of the State of California.

17 **7.2** The Parties have participated jointly in the preparation of this Consent Judgment,
18 which is the result of the collective efforts of the Parties. This Consent Judgment was subject to
19 revision and modification by the Parties, and has been accepted and approved as to its final form
20 by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this
21 Consent Judgment shall not be interpreted against any Party as a result of the manner in which
22 this Consent Judgment was prepared. Each Party to this Consent Judgment agrees that any statute
23 or rule of construction providing that ambiguities are to be resolved against the drafting party
24 should not be employed in the interpretation of this Consent Judgment and, in this regard, the
25 Parties hereby waive the applications of California *Civil Code* Section 1654.

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1 **8. ENTIRE AGREEMENT**

2 This Consent Judgment constitutes the sole and entire agreement and understanding
3 between the Parties with respect to the subject matter hereof, and any prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
5 No other warranties, representations, or other agreements exist between the Parties, except as
6 expressly set forth herein. No representations, oral or otherwise, express or implied, other than
7 those specifically referred to herein, shall be deemed to exist or bind any of the Parties hereto.
8 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
9 binding, unless executed in writing by the Party to be bound thereby. No waiver of any of the
10 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
11 other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing
12 waiver.

13 **9. NOTICES**

14 All notices or correspondence to be given pursuant to this Consent Judgment shall be in
15 writing, and shall be personally delivered or sent by first-class, registered, certified mail,
16 overnight courier, and/or via facsimile transmission (with presentation of facsimile transmission
17 confirmation) addressed to the Parties as follows:

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19 For Plaintiff: YEROUSHALMI & ASSOCIATES
20 Reuben Yeroushalmi, Esq.
21 9100 Wilshire Boulevard, Suite 610E
22 Beverly Hills, CA 90212

23 For Defendants: MCKENNA LONG & ALDRIDGE LLP
24 Stanley W. Landfair, Esq.
25 101 California Street, 41st Floor
26 San Francisco, CA 94111

27 The contacts and/or addresses above may be amended by giving notice to all Parties to this
28 Consent Judgment.

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1 **10. COURT APPROVAL**

2 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
3 without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their
4 respective counsel. If the Court approves of this Consent Judgment, then the terms of this
5 Consent Judgment are incorporated into the terms of the Court’s Order.

6 Plaintiff will prepare and file a motion to approve this Consent Judgment in full, and shall
7 take all reasonable measures to ensure that it is entered without delay. In the event that the Court
8 declines to approve and order entry of the Consent Judgment without any change whatsoever, this
9 Consent Judgment shall become null and void upon the election of either Party and upon written
10 notice to all of the Parties to the Action pursuant to the notice provisions herein (unless the Parties
11 stipulate otherwise, in writing).

12 If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working days
13 thereafter, electronically provide or otherwise serve a copy of it and the report required pursuant
14 to 11 *Cal. Code Regs.* § 3004 to/on the California Attorney General’s Office.

15 **11. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment on behalf of their
17 respective Parties, and have read, understood, and agree to all of the terms and conditions of this
18 Consent Judgment.

19 **12. COUNTERPARTS/FACSIMILE SIGNING**

20 This Consent Judgment may be executed in one or more counterparts, each of which shall
21 be deemed an original, and all of which, when taken together, shall constitute one and the same
22 document. All signatures need not appear on the same page of the document and signatures of
23 the Parties transmitted by facsimile shall be deemed binding.

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IT IS SO STIPULATED:

Dated: 5/2/11

CONSUMER ADVOCACY GROUP, INC.

Lyn H Marcus
(Signature)

Lyn H Marcus
(Name)

President
(Title)

Dated: _____

WISCONSIN PHARMACAL
COMPANY, LLC

(Signature)

(Name)

(Title)

Dated: _____

THE COLEMAN COMPANY, INC.

(Signature)

(Name)

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CONSUMER ADVOCACY GROUP, INC.

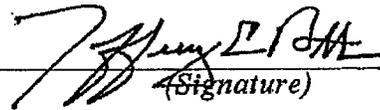
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Dated: 3/25/2011

WISCONSIN PHARMACAL
COMPANY, LLC.



(Signature)

JEFFREY C. POTTS

(Name)

L.D.O. / C.F.O.

(Title)

Dated: _____

THE COLEMAN COMPANY, INC.

(Signature)

(Name)

(Title)

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IT IS SO STIPULATED:

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CONSUMER ADVOCACY GROUP, INC.

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Dated: _____

WISCONSIN PHARMACAL
COMPANY, LLC

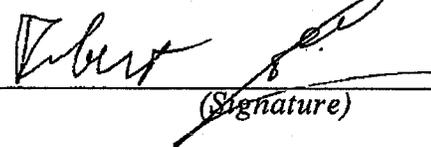
(Signature)

(Name)

(Title)

Dated: 3/24/11

THE COLEMAN COMPANY, INC.



(Signature)

Robert Cole

(Name)

VP Finance

(Title)

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Dated: 3/25/2011

AIRBORNE SALES CO., INC.

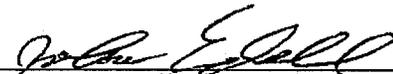

(Signature)

JOHN EDELL
(Name)

SEC/TREAS
(Title)

Dated: 3/25/2011

THE SURPLUS STORE

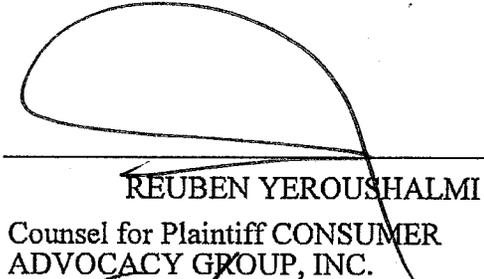

(Signature)

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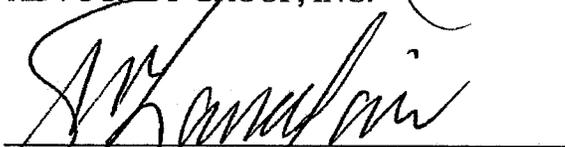
SEC/TREAS
(Title)

APPROVED AS TO FORM:

Dated: 5/2/11


REUBEN YEROUSHALMI
Counsel for Plaintiff CONSUMER
ADVOCACY GROUP, INC.

Dated: 5/2/2011


STANLEY W. LANDFAIR
Counsel for Defendants THE COLEMAN
COMPANY, INC.; WISCONSIN
PHARMACAL CO., LLC; AIRBORNE
SALES CO., INC.; THE SURPLUS STORE

