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4 Attorneys for Plaintiff
Maureen Parker
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF SAN DIEGO

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MAUREEN PARKER,

Case No. 37-2012-00096019-CU-NP-CTL

11

Plaintiff,

12

UNLIMITED JURISDICTION

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v.

**STIPULATION RE ENTRY OF
CONSENT JUDGMENT AS TO
THE COLEMAN COMPANY, INC.**

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THE COLEMAN COMPANY, INC.

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Defendant.

Complaint Filed: April 23, 2012

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1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Stipulation and [Proposed] Order Re Consent Judgment (“Consent Judgment”) is
4 hereby entered into by and between Maureen Parker acting on behalf of the public interest
5 (hereinafter “Parker”) and The Coleman Company, Inc., (hereinafter “Coleman”), with Parker
6 and Coleman collectively referred to as the “Parties” and each of them as a “Party.” Parker is an
7 individual residing in California who seeks to promote awareness of exposures to toxic chemicals
8 and improve human health by reducing or eliminating hazardous substances contained in
9 consumer products. Coleman employs ten or more persons and is a person in the course of doing
10 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

11 **1.2 Allegations and Representations**

12 Parker alleges that Coleman has offered for sale in the State of California and that
13 Coleman’s customers, K-Mart Corporation (“Kmart”) among others, have sold in California,
14 whistles containing lead, and that such sales have not been accompanied by Proposition 65
15 warnings. Lead is listed under Proposition 65 as a chemical known to the State of California to
16 cause cancer and birth defects or other reproductive harm. Parker has cited UPC 076501904925
17 as a specific example of the Coleman whistles that are the subject of her allegations.

18 For purposes of this Consent Judgment only, Coleman represents that: 1) UPC
19 076501904925 is marketed as a brass whistle item manufactured for and distributed to Kmart and
20 others by Coleman, 2) Coleman is an indirect, wholly-owned subsidiary of Jarden Corporation,
21 and 3) Coleman obtained test results from an international third-party laboratory in October 2010
22 indicating that the exemplar item did not contain detectable levels of lead and had no reason to
23 believe that the item contained lead until receiving Parker’s test results in December 2011.

24 **1.3 Product Description**

25 The products that are covered by this Consent Judgment are defined as whistles containing
26 lead which are manufactured for and distributed by Coleman and sold by Kmart and other
27 retailers in California whether as standalone items like UPC 076501904925 or as parts of sets
28 containing other products in addition to whistles. All such whistles shall be referred to herein as

1 the “Products.”

2 **1.4 Notices of Violation/Complaint**

3 On or about August 22, 2011, Parker served Coleman, Kmart, and all public enforcement
4 agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of
5 California with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided
6 Coleman, Kmart, and such public enforcers with notice that alleged that Coleman and Kmart
7 were in alleged violation of Proposition 65 for failing to warn consumers and customers that the
8 Products exposed users in California to lead. No public enforcer diligently prosecuted the claims
9 threatened in the Notice within sixty days plus service time relative to the provision of the Notice
10 to them by Parker, such that Parker filed a complaint in the matter as captioned above on April
11 23, 2012 (“Complaint”).

12 **1.5 Stipulation as to Jurisdiction - No Admission**

13 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
14 jurisdiction over Coleman as to the allegations contained in the complaint filed in this matter, that
15 venue is proper in the County of San Diego, and that this Court has jurisdiction to approve, enter,
16 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
17 claims which were or could have been raised in the Complaint based on the facts alleged therein
18 and/or in the Notices.

19 Coleman denies the material allegations contained in Parker’s Notice and Complaint and
20 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
21 construed as an admission by Coleman of any fact, finding, issue of law, or violation of law; nor
22 shall compliance with this Consent Judgment constitute or be construed as an admission by
23 Coleman of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
24 denied by Coleman. However, this section shall not diminish or otherwise affect the obligations,
25 responsibilities, and duties of Coleman under this Consent Judgment.

26 **1.6 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
28 Consent Judgment is entered as a judgment of the Court.

1 For purposes of this Consent Judgment, the term "Execution Date" shall mean the date
2 this Consent Judgment is signed by all parties in Clause 12 below.

3 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

4 **2.1 Reformulation Option.** The Products shall be deemed to comply with
5 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements
6 for lead if components of the Products from which exposures to lead may arise, including solder
7 used in the Products, meet the following criteria: (a) alloys from which the components are made
8 shall have no lead as an intentionally-added constituent; and, regardless of intent, (b) the alloy
9 from which the components are made and solder used in the Products shall have a lead content by
10 weight of no more than 0.01% (100 parts per million, or "100 ppm"). Coleman may comply with
11 the above requirements by relying on information obtained from its suppliers, provided such
12 reliance is in good faith. Obtaining test results showing that the lead content is no more than
13 0.01%, using a method of sufficient sensitivity to establish a limit of quantification (as
14 distinguished from detection) of less than 100 ppm shall be deemed to establish good faith
15 reliance, provided that Coleman does not receive later test results indicating that lead at, or in
16 excess of, 100 ppm has been detected in a component of or solder used in the Products.

17 **2.2 Warning Option.** Products that do not meet the specifications set forth in Section
18 2.1 above shall be accompanied by a warning as described in Section 2.3 below. The warning
19 requirements set forth in Section 2.3 below shall apply only to: (1) Products that Coleman
20 manufactures or causes to be manufactured after the Effective Date; and (2) Products
21 manufactured, distributed, marketed, sold or shipped for sale or use inside the State of California.
22 Warnings required hereunder 2.2 and 2.3 shall be provided on the Products within ten (10) days
23 of Execution Date.

24 **2.3** Where required under Sections 2.1 and 2.2 above, Coleman shall provide
25 Proposition 65 warnings as follows:

26 (a) Coleman may use either of the following warning statements:

27 (1) **WARNING:** This product contains lead, a chemical known to the
28 State of California to cause birth defects or other reproductive

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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 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.**

(b) Where utilized as an alternative to meeting the criteria set forth in Section 2.1, Coleman shall provide the warning language set forth in subsection 2.3(a)(1) and 2.3(a)(2) with the unit package of the Products. Such warning shall be prominently affixed to or printed on each Product’s label or package or, if not the label or package of each Product, then displayed on box, bin, or shelf from which the Product is offered for sale in California within ten (10) days of the Execution Date. If printed on the label itself, the warning shall be contained in the same size font and same section that states other safety warnings, if any, concerning the use of the Product. If no other warnings are present then printed in a conspicuous location and in same size font as other printed words such to be noticed by the normal user of the product. Coleman may continue to utilize, on an ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those set forth in Section 2.3(a) above, but only to the extent such packaging materials have already been printed within ninety days following the Effective Date

(c) The Parties also recognize that the requirements set forth in sections 2.2 and 2.3(a) and (b) above 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.

1 (d) If Proposition 65 warnings for lead or lead compounds should no longer be
2 required, Coleman shall have no further warning obligations pursuant to this
3 Consent Judgment. Except as provided in Section 2.1 above, in the event that
4 Coleman ceases to implement or modifies the warnings required under this
5 Consent Judgment (because of a change in the law or otherwise), Coleman shall
6 provide written notice to Parker (through counsel) of its intent to do so, and of the
7 basis for its intent, no less than thirty (30) days in advance.

8 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

9 With regard to all claims that have been raised or which could be raised with respect to
10 failure to warn pursuant to Proposition 65 with regard to lead in the Products, Coleman shall pay
11 a civil penalty of \$1,000 pursuant to Health and Safety Code section 25249.7(b), to be
12 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these
13 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
14 and the remaining 25% of the penalty remitted to Parker, as provided by California Health &
15 Safety Code § 25249.12(d) and the instructions directly below.

16 Coleman shall issue two separate checks for the penalty payment: (a) one check made
17 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of
18 the total penalty (i.e., \$750); and (b) one check in an amount representing 25% of the total penalty
19 (i.e., \$250) made payable directly to Parker. Coleman shall mail these payments within
20 fifteen days following the Effective Date, to the following addresses respectively, providing a
21 copy of its checks and transmittal letters to Parker's counsel at that time as well:

22 Proposition 65 Settlement Coordinator
23 California Department of Justice
24 1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

25 Maureen Parker
26 C/O Law Offices of Stephen Ure, PC
27 1518 Sixth Ave, San Diego, CA 92101
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1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 The parties reached an accord on the compensation due to Parker and her counsel under
3 the private attorney general doctrine and principles of contract law. Under these legal principles,
4 Coleman shall reimburse Parker’s counsel for fees and costs, incurred as a result of investigating,
5 bringing this matter to Coleman’s attention, and negotiating a settlement in the public interest.
6 Coleman shall pay Parker’s counsel \$31,500.00 for all attorneys’ fees, expert and investigation
7 fees, and related costs associated with this matter and the Notice. Coleman shall wire said monies
8 to the “Law Offices of Stephen Ure, PC, Trust Account” (tax identification number 42-1641673)
9 within five days following the Execution Date. The Law Offices of Stephen Ure, PC will provide
10 Coleman with wire instruction and tax identification information on or before the Execution Date.
11 Other than the payment required hereunder, each side is to bear its own attorneys’ fees and costs.

12 **5. RELEASE OF ALL CLAIMS**

13 **5.1 Release of Coleman and Downstream Customers**

14 Parker, on behalf of herself and in the public interest, releases Coleman and each of its
15 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but
16 not limited to, Kmart), franchisees, dealers, customers, owners, purchasers, users, parent
17 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
18 representatives, shareholders, agents, and employees, and sister and parent entities (collectively
19 “Releasees”) from all claims for violations of Proposition 65 up through the Effective Date based
20 on exposure to lead from the Products as set forth in her Notice of Violation. Compliance with
21 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
22 exposures to lead from the Products.

23 In addition to the foregoing, Parker, on behalf of herself, her past and current agents,
24 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,
25 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
26 action and releases any other Claims that she could make against Coleman or its Releasees arising
27 up to the Effective Date with respect to violations of Proposition 65 based upon the Products.
28 With respect to the foregoing waivers and releases in this paragraph, Parker hereby specifically

1 waives any and all rights and benefits which she now has, or in the future may have, conferred by
2 virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

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11 **5.2 Coleman's Release of Parker**

12 Coleman waives any and all claims against Parker, her attorneys and other representatives,
13 for any and all actions taken or statements made (or those that could have been taken or made) by
14 Parker and her attorneys and other representatives, whether in the course of investigating claims
15 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect
16 to the Products.

17 **6. SEVERABILITY AND MERGER**

18 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
19 document are held by a court to be unenforceable, the validity of the enforceable provisions
20 remaining shall not be adversely affected.

21 This Consent Judgment contains the sole and entire agreement of the Parties and any and
22 all prior negotiations and understandings related hereto shall be deemed to have been merged
23 within it. No representations or terms of agreement other than those contained herein exist or
24 have been made by any Party with respect to the other Party or the subject matter hereof.

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California and apply within the State of California. Compliance with the terms of this Consent
28 Judgment resolves any issue, now or in the future, with the requirements of Proposition 65 with
respect to alleged exposures to lead arising from the Products. In the event that Proposition 65 is
repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
then Coleman shall provide written notice to Parker of any asserted change in the law, and shall

1 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
2 that, the Products are so affected.

3 **8. NOTICES**

4 Unless specified herein, all correspondence and notices required to be provided pursuant
5 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
6 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
7 other party at the following addresses:

8 For Coleman:

9 Marc P. Clements
10 Vice-President, Litigation
2111 East 37th Street N
11 Wichita, KS 67219

12 With a copy to:

13 Robert L. Falk, Esq.
William F. Tarantino, Esq.
14 Morrison & Foerster LLP
425 Market Street
15 San Francisco, California 94105

16 and

17 For Parker:

18 Stephen Ure
Law Offices of Stephen Ure, PC.
19 1518 Sixth Avenue
San Diego, California 92101

20 Any party, from time to time, may specify in writing to the other party a change of address to
21 which all notices and other communications shall be sent.

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by facsimile, each of which
24 shall be deemed an original, and all of which, when taken together, shall constitute one and the
25 same document.
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1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**

2 **APPROVAL**

3 Parker agrees to comply with the requirements set forth in California Health & Safety
4 Code §25249.7(f) and to promptly bring a motion for approval of this Consent Judgment. This
5 Consent Judgment shall not be effective until it is approved and entered by the Court and shall be
6 null and void if, for any reason, it is not approved and entered by the Court within six months
7 after it has been fully executed by the Parties, in which event any monies that have been paid
8 pursuant to Section 3 and Section 4 above, shall be refunded to Coleman within fifteen (15) days
9 after receiving written notice from Coleman that the six month period has expired.

10 **11. MODIFICATION**

11 This Consent Judgment may be modified only by further stipulation of the Parties and the
12 approval of the Court or upon the granting of a motion brought to the Court by either Party.

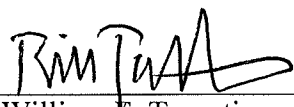
13 **12. AUTHORIZATION**

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

17 **APPROVED AS TO FORM:**

18 Dated: May 8, 2012

MORRISON & FOERSTER LLP

19
20 By: 

William F. Tarantino
Attorneys for Defendant,
THE COLEMAN COMPANY, INC.

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23 Dated: May _____, 2012

LAW OFFICES OF STEPHEN URE, PC

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25 By: _____

Stephen Ure, Esq.
Attorneys for Plaintiff,
MAUREEN PARKER

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IT IS HEREBY SO STIPULATED:


AGREED TO:

AGREED TO:

Date: _____

Date: 5/8/2012

By: _____
MAUREEN PARKER

By: 

THE COLEMAN COMPANY, INC.
VP - Litigation

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 Parker agrees to comply with the requirements set forth in California Health & Safety
4 Code §25249.7(f) and to promptly bring a motion for approval of this Consent Judgment. In the
5 event the Court does not grant Parker's motion for approval of or enter this Consent Judgment
6 within one (1) year after it has been fully executed by the parties, the parties shall meet and confer
7 as to (and jointly agree on) whether to modify the language or appeal the ruling. If the parties do
8 not jointly agree on a course of action to take, then the case shall proceed in its normal course on
9 the trial court's calendar, and Parker's counsel shall refund Coleman the payment provided
10 pursuant paragraph 4 in full within thirty (30) days of Coleman providing written notice thereof.

11 **11. MODIFICATION**

12 This Consent Judgment may be modified only by further stipulation of the Parties and the
13 approval of the Court or upon the granting of a motion brought to the Court by either Party.

14 **12. AUTHORIZATION**

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

18 **APPROVED AS TO FORM:**

19 Dated: April _____, 2012

MORRISON & FOERSTER LLP

21 By: _____

William F. Tarantino

Attorneys for Defendant,
THE COLEMAN COMPANY, INC.

23 ^{S.U.}
24 Dated: ^{MAY} April 8, 2012

LAW OFFICES OF STEPHEN URE, PC

25 By:  _____

26 Stephen Ure, Esq.
27 Attorneys for Plaintiff,
28 MAUREEN PARKER

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IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: May 8, 2012

Date: _____

By: Maureen Parker
MAUREEN PARKER

By: _____
THE COLEMAN COMPANY, INC.