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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MAUREEN PARKER,
Plaintiff,
v.
THE COLEMAN COMPANY, INC.
Defendant.

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

UNLIMITED JURISDICTION

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

Complaint Filed: April 23, 2012
Judge: Honorable Joan M. Lewis
Dept. C-65

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 076501904925 is
19 marketed as a brass whistle item manufactured for and distributed to Kmart and others by
20 Coleman, 2) Coleman is an indirect, wholly-owned subsidiary of Jarden Corporation, and 3)
21 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 Parker represents that her independent testing confirmed by two independent laboratories
25 that lead was present and accessible in amounts that would expose users to lead in excess of the
26 allowable safe harbor number for lead, 0.5 ug/day for reproductive toxicity and for carcinogens
27 15 ug/day oral, as established by California Office of Environmental Health Hazard Assessment.
28 See <http://www.oehha.ca.gov/prop65/pdf/2012StatusReportJune.pdf>

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1.3 Product Description

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

1.4 Notices of Violation/Complaint

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

1.5 Stipulation as to Jurisdiction/No Admission

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

Coleman denies the material allegations contained in Parker’s Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Coleman of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Coleman of any fact, finding, conclusion, issue of law, or violation of law, such being specifically

1 denied by Coleman. However, this section shall not diminish or otherwise affect the obligations,
2 responsibilities, and duties of Coleman under this Consent Judgment.

3 **1.6 Effective Date**

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

6 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date
7 this Consent Judgment is signed by all parties in Clause 12 below.

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

9 In a case alleging failure to warn, a settlement that provides for the giving of a clear and
10 reasonable warning, where there had been no warning provided prior to the sixty-day notice, for
11 an exposure that appears to require a warning, is presumed to confer a significant benefit on the
12 public. If there is no evidence of an exposure for which a warning plausibly is required; there is
13 no public benefit, even if a warning is given. If the relief consists of minor or technical changes in
14 the language, appearance, or location of a warning in a manner that is not likely to significantly
15 increase its visibility or effectiveness in communicating the warning to the exposed persons, there
16 is no significant public benefit. Where a settlement sets forth a standard or formula for when a
17 given product requires a warning, supporting evidence should show that at least some of the
18 products in controversy in the action either are, or at some time were, above the warning level, or
19 the existence of the standard or formula itself may not establish the existence of a public benefit.
20 Cal.Code Regs., tit. 11 § 3201(2) (b) (1).

21 **2.1 Reformulation Option.** The Products shall be deemed to comply with
22 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements
23 for lead if components of the Products from which exposures to lead may arise, including solder
24 used in the Products, meet the following criteria: (a) alloys from which the components are made
25 shall have no lead as an intentionally-added constituent; and, regardless of intent, (b) the alloy
26 from which the components are made and solder used in the Products shall have a lead content by
27 weight of no more than 0.01% (100 parts per million, or “100 ppm”) which complies with the
28 strictest standard for lead in children’s items as established by the US Consumer Product Safety

1 Commission, See 16 CFR Part 1500.90, and significantly reduces the lead content in the
2 Products, which Parker contends were in excess of 0.1% lead.

3 Coleman may comply with the above requirements by relying on information obtained
4 from its suppliers, provided such reliance is in good faith. Obtaining test results showing that the
5 lead content is no more than 0.01%, using a method of sufficient sensitivity to establish a limit of
6 quantification (as distinguished from detection) of less than 100 ppm shall be deemed to establish
7 good faith reliance, provided that Coleman does not receive later test results indicating that lead
8 at, or in excess of, 100 ppm has been detected in a component of or solder used in the Products.

9 **2.2 Warning Option.**

10 Pursuant to California Code of Regulations, title 27, § 25603.2 (a), a Proposition 65
11 warning message must include the following language for consumer products that contain a
12 chemical known to the state to cause reproductive toxicity: “WARNING: This product contains a
13 chemical known to the State of California to cause birth defects or other reproductive harm.”

14 The Parties hereto agree that Products that do not meet the specifications set forth in
15 Section 2.1 above shall be accompanied by a warning in compliance with § 25603.2, as described
16 above. The warning requirements shall apply only to: (1) Products that Coleman manufactures
17 or causes to be manufactured after the Effective Date; and (2) Products manufactured, distributed,
18 marketed, sold or shipped for sale or use inside the State of California. Warnings required
19 hereunder 2.2 shall be provided on the Products within ten (10) days of Execution Date.

20 Where utilized as an alternative to meeting the criteria set forth in Section 2.1, Coleman
21 shall provide the warning language set forth with the unit package of the Products. Such warning
22 shall be prominently affixed to or printed on each Product’s label or package or, if not the label or
23 package of each Product, then displayed on box, bin, or shelf from which the Product is offered
24 for sale in California within ten (10) days of the Execution Date. If printed on the label itself, the
25 warning shall be contained in the same size font and same section that states other safety
26 warnings, if any, concerning the use of the Product. If no other warnings are present then printed
27 in a conspicuous location and in same size font as other printed words such to be noticed by the
28 normal user of the product. Coleman may continue to utilize, on an ongoing basis, unit packaging

1 containing substantively the same Proposition 65 warnings as those set forth in herein, but only
2 to the extent such packaging materials have already been printed within ninety days following the
3 Effective Date

4 The Parties also recognize that the requirements set forth in sections 2.2 above are not the
5 exclusive methods of providing a warning under Proposition 65 and its implementing regulations
6 and that they may or may not be appropriate in other circumstances.

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

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

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

21 Coleman shall issue two separate checks for the penalty payment: (a) one check made
22 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of
23 the total penalty (i.e., \$750.00); and (b) one check in an amount representing 25% of the total
24 penalty (i.e., \$250.00) made payable directly to Parker. Coleman shall mail these payments
25 within fifteen days following the Effective Date, to the following addresses respectively,
26 providing a copy of its checks and transmittal letters to Parker's counsel at that time as well:
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1 Proposition 65 Settlement Coordinator
2 California Department of Justice
3 1515 Clay Street, 20th Floor
4 Oakland, CA 94612-1413

5 Maureen Parker
6 C/O Law Offices of Stephen Ure, PC
7 1518 Sixth Ave, San Diego, CA 92101

8 **4. REIMBURSEMENT OF FEES AND COSTS**

9 The parties reached an accord on the compensation due to Parker and her counsel under
10 the private attorney general doctrine and principles of contract law. Under these legal principles,
11 Coleman shall reimburse Parker's counsel for fees and costs, incurred as a result of investigating,
12 bringing this matter to Coleman's attention, and negotiating a settlement in the public interest. A
13 contemporaneous record of counsel's time and expense dedicated to prosecuting this case is
14 attached in support of the fees herein. Such fees are proper and reasonable under the private
15 attorney general doctrine. Coleman shall pay Parker's counsel \$31,500.00 for all attorneys' fees,
16 expert and investigation fees, and related costs associated with this matter and the Notice.
17 Coleman shall wire said monies to the "Law Offices of Stephen Ure, PC, Trust Account" (tax
18 identification number 42-1641673). The Law Offices of Stephen Ure, PC will provide Coleman
19 with wire instruction and tax identification information on or before the Effective Date. Other
20 than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Release of Coleman and Downstream Customers**

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

1 exposures to lead from the Products.

2 In addition to the foregoing, Parker, on behalf of herself, her past and current agents,
3 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,
4 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
5 action and releases any other Claims that she could make against Coleman or its Releasees arising
6 up to the Effective Date with respect to violations of Proposition 65 based upon the Products.

7 With respect to the foregoing waivers and releases in this paragraph, Parker hereby specifically
8 waives any and all rights and benefits which she now has, or in the future may have, conferred by
9 virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

10
11 A GENERAL RELEASE DOES NOT EXTEND TO
12 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
13 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
14 EXECUTING THE RELEASE, WHICH IF KNOWN BY
15 HIM MUST HAVE MATERIALLY AFFECTED HIS
16 SETTLEMENT WITH THE DEBTOR.

14 **5.2 Coleman's Release of Parker**

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

20 **6. SEVERABILITY AND MERGER**

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

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

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. Compliance with the terms of this Consent
4 Judgment resolves any issue, now or in the future, with the requirements of Proposition 65 with
5 respect to alleged exposures to lead arising from the Products. In the event that Proposition 65 is
6 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
7 then Coleman shall provide written notice to Parker of any asserted change in the law, and shall
8 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
9 that, the Products are so affected.

10 **8. NOTICES**

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

15 For Coleman:

16 Marc P. Clements
17 Vice-President, Litigation
18 2111 East 37th Street N
19 Wichita, KS 67219

19 With a copy to:

20 William F. Tarantino, Esq.
21 Morrison & Foerster LLP
22 425 Market Street
23 San Francisco, California 94105

23 and

24 For Parker:

25 Stephen Ure
26 Law Offices of Stephen Ure, PC.
27 1518 Sixth Avenue
28 San Diego, California 92101

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile, each of which
5 shall be deemed an original, and all of which, when taken together, shall constitute one and the
6 same document.

7 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

8 Parker agrees to comply with the requirements set forth in California Health & Safety
9 Code §25249.7(f) and to promptly bring a motion for approval of this Consent Judgment.

10 Coleman agrees to cooperate with Parker and support Parker's motion for approval.

11 In the event the Court does not grant Parker's motion for approval of or enter this
12 Consent Judgment within one (1) year after it has been fully executed by the parties, the parties
13 shall meet and confer as to (and jointly agree on) whether to modify the language or appeal the
14 ruling. If the parties do not jointly agree on a course of action to take, then the case shall proceed
15 in its normal course on the trial court's calendar and Parker's counsel shall refund Coleman the
16 payment provided pursuant paragraph 4 in full within thirty (30) days of Coleman providing
17 written notice thereof.

18 **11. MODIFICATION**

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

21 **12. AUTHORIZATION**

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

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APPROVED AS TO FORM:

Dated: October 16, 2012

MORRISON & FOERSTER LLP

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

Dated: October 16, 2012

LAW OFFICES OF STEPHEN URE, PC

By: _____
Stephen Ure, Esq.
Attorneys for Plaintiff,
MAUREEN PARKER

IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: _____

Date: 10/17/2012

By: _____
MAUREEN PARKER

By: _____
THE COLEMAN COMPANY, INC.

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APPROVED AS TO FORM:

Dated: October 16, 2012

MORRISON & FOERSTER LLP

By: 

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

Dated: October 16, 2012

LAW OFFICES OF STEPHEN URE, PC

By: 

Stephen Ure, Esq.
Attorneys for Plaintiff,
MAUREEN PARKER

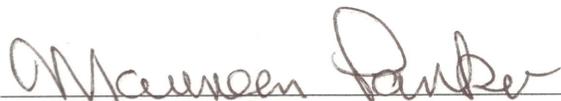
IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: 10/18/2012

Date: _____

By: 

MAUREEN PARKER

By: _____
THE COLEMAN COMPANY, INC.