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4 Attorneys for Plaintiff, Evelyn Wimberley

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10 EVELYN WIMBERLEY,  
11 Plaintiff,  
12 v.  
13 THE COLEMAN COMPANY, INC.  
14 Defendant.

Case No:  
  
UNLIMITED JURISDICTION  
  
**STIPULATION RE ENTRY OF  
CONSENT JUDGMENT AS TO  
THE COLEMAN COMPANY, INC.**  
  
Complaint Filed: May 09, 2013  
  
Judge:  
  
Dept.

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18 **1. INTRODUCTION**

19 **1.1 The Parties**

20 This Stipulation and [Proposed] Order Re Consent Judgment (“Consent Judgment”) is  
21 hereby entered into by and between Evelyn Wimberley acting on behalf of the public interest  
22 (hereinafter “Wimberley”) and The Coleman Company, Inc., (hereinafter “Coleman”), with  
23 Wimberley and Coleman collectively referred to as the “Parties” and each of them as a “Party.”  
24 Wimberley is an individual residing in California who seeks to promote awareness of exposures  
25 to toxic chemicals and improve human health by reducing or eliminating hazardous substances  
26 contained in consumer products. Coleman employs ten or more persons and is a person in the  
27 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et  
28

1 seq.

2 **1.2 Allegations and Representations**

3 Wimberley alleges that Coleman has offered for sale in the State of California and that  
4 Coleman’s customers, Walmart Stores, Inc., (“Walmart”) among others, have sold in California,  
5 lantern spark igniters containing lead, and that such sales have not been accompanied by  
6 Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of  
7 California to cause cancer and birth defects or other reproductive harm. Wimberley has cited  
8 UPC 076501900637 as a specific example of the Coleman lantern spark igniters that are the  
9 subject of her allegations.  
10

11 For purposes of this Consent Judgment only, Coleman represents that: 1) UPC  
12 076501900637 is marketed as a lantern spark igniter by Coleman, 2) Coleman is an indirect,  
13 wholly-owned subsidiary of Jarden Corporation,; and 3) Coleman had no reason to believe that  
14 the item contained impermissible levels of accessible lead that would expose users to lead in  
15 excess of the allowable safe harbor number for lead until receiving Wimberley’s 60-Day Notice  
16 in February 2013. Wimberley represents and contends that she confirmed through testing  
17 conducted by two independent laboratories that lead was present and accessible in amounts that  
18 would expose users to lead in excess of the allowable safe harbor number for lead, .05 ug/day for  
19 reproductive toxicity and for carcinogens 15 ug/day oral, as established by California Office of  
20 Environmental Health Hazard Assessment. See

21 <http://www.oehha.ca.gov/prop65/pdf/2012StatusReportJune.pdf>  
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23  
24 **1.3 Product Description**

25 The products that are covered by this Consent Judgment are defined as lantern spark  
26 igniters containing lead which are manufactured for and distributed by Coleman and sold by  
27 Walmart and other retailers in California whether as standalone items like UPC 076501900637 or  
28 as parts of sets containing other products in addition to lantern spark igniters. All such lantern

1 spark igniters shall be referred to herein as the “Covered Products.”

2 **1.4 Notices of Violation/Complaint**

3 On or about February 8, 2013, Wimberley served Coleman, Walmart, and all public  
4 enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the  
5 State of California with a document entitled “60-Day Notice of Violation” (the “Notice”) that  
6 provided Coleman, Walmart, and such public enforcers with notice that alleged that Coleman and  
7 Walmart were in alleged violation of Proposition 65 for failing to warn consumers and customers  
8 that the Covered Products exposed users in California to lead in excess of the safe harbor levels as  
9 established by California Office of Environmental Health Hazard Assessment. No public  
10 enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service  
11 time relative to the provision of the Notice to them by Wimberley, such that Wimberley filed a  
12 complaint in the matter as captioned above on May 9, 2013 (“Complaint”).

13 **1.5 Stipulation as to Jurisdiction/No Admission**

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

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

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**1.6 Effective Date**

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

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

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

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

TITLE 11-DEPARTMENT OF JUSTICE, DIVISION 4-PROPOSITION 65 PRIVATE ENFORCEMENT, FINAL REGULATION § 3201(2) (b) (1).

Commencing on the Effective Date, Coleman shall not ship, sell, or offer to sell in California a Covered Product(s) that is/are manufactured, distributed, shipped or sold by Coleman containing more than 100 parts per million lead. Products manufactured, distributed, shipped or sold, or that are otherwise in the stream of commerce, prior to the Effective Date shall be released from any and all claims that were brought or that could have been brought by Wimberley in this

1 action, as though they were covered claims within the meaning of Section 5 of this Consent  
2 Judgment.

3 On the Effective Date in California the Covered Product shall either be (a) reformulated  
4 pursuant to Section 2.1 or (b) include a warning as provided in Section 2.2.

5 **2.1 Reformulation Option.** The Covered Products shall be deemed to comply with  
6 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements  
7 for lead if components of the Covered Products from which exposure to lead may arise meet the  
8 following criteria: (a) alloys from which the components are made shall have no lead as an  
9 intentionally-added constituent; and, regardless of intent, (b) the alloy from which the  
10 components are made and solder used in the Covered Products shall have a lead content by  
11 weight of no more than 0.01% (100 parts per million, or “100 ppm”) which complies with the  
12 strictest standard for lead in children’s items as established by the US Consumer Product Safety  
13 Commission, See CONSUMER PRODUCT SAFETY COMMISSION 16 CFR Part 1500.90, and  
14 significantly reduces the lead content in the Products, which were in excess of 1% lead. . The  
15 Covered Products are not childrens’ products under either Federal or California law.  
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18 Coleman may comply with the above requirements by relying on information obtained  
19 from its suppliers, provided such reliance is in good faith. Obtaining test results showing that the  
20 lead content is no more than 0.01%, using a method of sufficient sensitivity to establish a limit of  
21 quantification (as distinguished from detection) of less than 100 ppm shall be deemed to establish  
22 good faith reliance, provided that Coleman does not receive later test results indicating that lead  
23 at, or in excess of, 100 ppm has been detected in a component of or solder used in the Covered  
24 Products.

25 **2.2 Warning Option.** Pursuant to § 25603.2 Consumer Products Exposure Warnings –  
26 Content (a) The warning message must include the following language:

27 **1.** For consumer products that contain lead and other chemicals known to the state to cause  
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1 cancer, birth defect or other reproductive harm:

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

5 2. For consumer products that contain a chemical known to the state to cause reproductive  
6 toxicity:

7 "WARNING: This product contains a chemical known to the State of California to cause birth  
8 defects or other reproductive harm."

9 NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6  
10 and 25249.11, Health and Safety Code.

11 The Parties hereto agree that Covered Products not already in the stream of commerce that  
12 do not meet the specifications set forth in Section 2.1 above shall be accompanied by a warning in  
13 compliance with § 25603.2 Consumer Products Exposure Warnings as described above.

14 Warnings required hereunder 2.2 shall be provided on the Covered Product within thirty (30) days  
15 of Execution Date.

16 (a) Where utilized as an alternative to meeting the criteria set forth in Section  
17 2.1, Coleman shall provide the warning language set forth with the unit package of  
18 the Covered Products. Such warning shall be prominently affixed to or printed on  
19 each Covered Product's label or package or, if not the label or package of each  
20 Covered Product, then displayed on box, bin, or shelf from which the Covered  
21 Product is offered for sale in California within thirty (30) days of the Execution  
22 Date. If printed on the label itself, the warning shall be contained in the same size  
23 font and same section that states other safety warnings, if any, concerning the use  
24 of the Covered Product. If no other warnings are present then printed in a  
25 conspicuous location and in same size font as other printed words such to be  
26 noticed by the normal user of the product. Coleman may continue to utilize, on an  
27 ongoing basis, unit packaging containing substantively the same Proposition 65  
28 warnings as those set forth in herein, but only to the extent such packaging

1 materials have already been printed within ninety days following the Effective  
2 Date.

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

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

14 (d) Coleman shall provide Wimberley with information sufficient to establish  
15 the date labeling was changed to be in compliance with this consent judgment

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

17 With regard to all claims that have been raised or which could be raised with respect to  
18 failure to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Coleman  
19 shall pay a civil penalty of \$1,000.00 pursuant to Health and Safety Code section 25249.7(b), to  
20 be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these  
21 funds remitted to the State of California's Office of Environmental Health Hazard Assessment  
22 and the remaining 25% of the penalty remitted to Wimberley, as provided by California Health &  
23 Safety Code § 25249.12(d) and the instructions directly below.

24 Coleman shall issue two separate checks for the penalty payment: (a) one check made  
25 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of  
26 the total penalty (i.e., \$750.00); and (b) one check in an amount representing 25% of the total  
27 penalty (i.e., \$250.00) made payable directly to Wimberley. Coleman shall mail these payments  
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1 within five days following the Effective Date, to the following addresses respectively, providing a  
2 copy of its checks and transmittal letters to Wimberley's counsel at that time as well:

3 Proposition 65 Settlement Coordinator  
4 California Department of Justice  
5 1515 Clay Street, 20<sup>th</sup> Floor  
6 Oakland, CA 94612-1413

7 Evelyn Wimberley  
8 C/O Law Offices of Stephen Ure, PC  
9 1518 Sixth Ave, San Diego, CA 92101

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

11 The parties reached an accord on the compensation due to Wimberley and her counsel  
12 under the private attorney general doctrine and principles of contract law. Under these legal  
13 principles, Coleman shall reimburse Wimberley's counsel for fees and costs, incurred as a result  
14 of investigating, bringing this matter to Coleman's attention, and negotiating a settlement in the  
15 public interest. Coleman shall pay Wimberley's counsel \$24000.00 for all attorneys' fees, expert  
16 and investigation fees, and related costs associated with this matter and the Notice. Coleman  
17 shall wire said monies to the "Law Offices of Stephen Ure, PC" (tax identification number 42-  
18 1641673) within three days following the Execution Date. The Law Offices of Stephen Ure, PC  
19 will provide Defendant(s) with wire instruction and tax identification information on or before the  
20 Execution Date. Other than the payment required hereunder, each side is to bear its own  
21 attorneys' fees and costs.

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1 Release of Coleman and Downstream Customers**

24 Wimberley, on behalf of herself and in the public interest, releases Coleman and each of  
25 its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but  
26 not limited to, Walmart Stores, Inc. and its affiliates and subsidiaries), franchisees, dealers,  
27 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and  
28 their respective officers, directors, attorneys, representatives, shareholders, agents, and  
employees, and sister and parent entities (collectively "Releasees") from any and all claims for  
violations of Proposition 65 up through the Effective Date based upon exposure to lead from the



1 Covered Product as set forth in her Notice of Violation. Compliance with the terms of this  
2 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead  
3 from the Covered Product.

4 In addition to the foregoing, Wimberley, on behalf of herself, her past and current agents,  
5 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,  
6 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
7 action and releases any other Claims that she could make against Coleman or its Releasees arising  
8 up to the Effective Date with respect to violations of Proposition 65 based upon the Covered  
9 Product. With respect to the foregoing waivers and releases in this paragraph, Wimberley hereby  
10 specifically waives any and all rights and benefits which she now has, or in the future may have,  
11 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
12 provides as follows:

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

17 **5.2 Coleman's Release of Wimberley**

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

23 **6. SEVERABILITY AND MERGER**

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

27 This Consent Judgment contains the sole and entire agreement of the Parties and any and  
28 all prior negotiations and understandings related hereto shall be deemed to have been merged

1 within it. No representations or terms of agreement other than those contained herein exist or  
2 have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

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

12 **8. NOTICES**

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

17 For Coleman:

18 Marc P. Clements  
19 Vice-President, Litigation  
20 2111 East 37th Street N  
Wichita, KS 67219

21 With a copy to:

22 Elizabeth V. McNulty  
23 Hewitt Wolensky LLP  
24 4041 MacArthur Blvd., Suite 300  
Newport Beach, CA. 92660

25 and

26 For Wimberley:

27 Stephen Ure  
28 Law Offices of Stephen Ure, PC.  
1518 Sixth Avenue

1 San Diego, California 92101

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

4 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

12 Coleman agrees to cooperate with Wimberley and support Wimberley's motion for approval.

13 In the event the Court does not grant Wimberley's motion for approval of or enter this  
14 Consent Judgment within eighteen (18) months after it has been fully executed by the parties,  
15 the parties shall meet and confer as to (and jointly agree on) whether to modify the language or  
16 appeal the ruling. If the parties do not jointly agree on a course of action to take, then the case  
17 shall proceed in its normal course on the trial court's calendar and Wimberley's counsel shall  
18 refund Coleman the payment provided pursuant paragraph 4 in full within thirty (30) days of  
19 Coleman providing written notice thereof.

20 **11. MODIFICATION**

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

23 **12. AUTHORIZATION**

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

27 **[Signatures Follow]**

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**APPROVED AS TO FORM:**

Dated: May 07, 2013

HEWITT WOLENSKY LLP

By: \_\_\_\_\_  
Elizabeth V. McNulty  
Attorneys for Defendant,  
THE COLEMAN COMPANY, INC.

Dated: May 07, 2013

LAW OFFICES OF STEPHEN URE, PC

By: \_\_\_\_\_  
Stephen Ure, Esq.  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY

**IT IS HEREBY SO STIPULATED:**

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
EVELYN WIMBERLEY

By: \_\_\_\_\_  
THE COLEMAN COMPANY, INC.

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**APPROVED AS TO FORM:**

Dated: May 07, 2013

HEWITT WOLENSKY LLP

By:   
Elizabeth V. McNulty  
Attorneys for Defendant,  
THE COLEMAN COMPANY, INC.

Dated: May 07, 2013

LAW OFFICES OF STEPHEN URE, PC

By: \_\_\_\_\_  
Stephen Ure, Esq.  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY

**IT IS HEREBY SO STIPULATED:**

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 5/8/13

By: \_\_\_\_\_  
EVELYN WIMBERLEY

By:   
THE COLEMAN COMPANY, INC.

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**APPROVED AS TO FORM:**


Dated: May 07, 2013

HEWITT WOLENSKY LLP

By: \_\_\_\_\_  
Elizabeth V. McNulty  
Attorneys for Defendant,  
THE COLEMAN COMPANY, INC.

Dated: May 07, 2013

LAW OFFICES OF STEPHEN URE, PC

By:  \_\_\_\_\_  
Stephen Ure, Esq.  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY

**IT IS HEREBY SO STIPULATED:**

**AGREED TO:**

**AGREED TO:**

Date: 5/7/13

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
EVELYN WIMBERLEY

By: \_\_\_\_\_  
THE COLEMAN COMPANY, INC.