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19 Attorneys for Plaintiff
20 Arthur Zivkovic

21 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
22 **FOR THE COUNTY OF SAN FRANCISCO**

23 Arthur Zivkovic, an individual,

24 Plaintiff,

25 v.

26 The Coleman Company Inc., a Delaware
27 corporation and Wal-Mart Stores, Inc., a
28 Delaware corporation,

Defendants.

**[PROPOSED] CONSENT
JUDGMENT RE: THE COLEMAN
COMPANY, INC**

Date:
Time:
Place:

1 **I. Introduction**

2 1.1. This Consent Judgment is entered into by Plaintiff Arthur Zivkovic, an
3 individual (“Plaintiff”), and Defendant The Coleman Company, Inc., a Delaware
4 corporation (“Coleman” or “Defendant”) to settle claims asserted by Plaintiff against
5 Defendant. Plaintiff and Defendant are collectively referred to as “Parties.”

6 1.2. On July 23, 2015, Plaintiff served a Notice of Violation (“Notice”) relating
7 to California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition
8 65”) on Coleman, Wal-Mart Stores, Inc., the California Attorney General, the District
9 Attorneys of every County in the State of California, and the City Attorneys for every City
10 in the State of California with a population greater than 750,000. The Notice alleged
11 violations of Proposition 65 with respect to the presence of Listed Chemical Flame
12 Retardants in Products manufactured, distributed, and/or sold by Coleman and/or
13 Walmart.

14 1.3. Defendant is a corporation that employs ten (10) or more persons and that
15 manufactures, distributes, and/or sells Products in the State of California.

16 1.4. For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
17 Court has jurisdiction over the allegations of violations contained in the Notice and
18 personal jurisdiction over Defendant as to the acts alleged in the Notice; (ii) venue is
19 proper in the County of San Francisco; and (iii) this Court has jurisdiction to enter this
20 Consent Judgment as a full and final resolution of all claims which were or could have
21 been raised in the Notice based on the facts alleged in the Notice with respect to Products
22 manufactured, distributed, and/or sold by Defendant.

23 1.5. The Parties enter into this Consent Judgment as a full and final settlement of
24 all claims which were or could have been raised in the Notice arising out of facts or
25 conduct related to Defendant alleged therein. By execution of this Consent Judgment and
26 agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or
27 violation of law, nor shall compliance with the Consent Judgment constitute or be
28 construed as an admission by the Parties of any fact, conclusion of law, or violation of

1 law. Defendant denies the material, factual and legal allegations in the Notice and
2 expressly denies any wrongdoing whatsoever. Except as specifically provided herein,
3 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,
4 argument, or defense either Party may have in this or any other pending or future legal
5 proceedings. This Consent Judgment is the product of negotiations and compromise and
6 is accepted by the Parties solely for purposes of settling, compromising, and resolving
7 issues disputed in the Notice.

8 **II. Definitions**

9 2.1 Throughout the remainder of this Consent Judgment, “Releasees” means,
10 collectively, Defendant and Defendant’s parents, officers, directors, shareholders,
11 divisions, subdivisions, subsidiaries, affiliates, sister companies with common ownership
12 and their respective successors and assignees.

13 2.2 “Downstream Releasees” means, collectively, each entity to whom
14 Defendant directly or indirectly has distributed or sold the Covered Products, including,
15 but not limited to, downstream distributors, wholesalers, customers, retailers (including
16 but not limited to Wal-Mart Stores, Inc., Walmart.com USA LLC, and any of their
17 affiliates and subsidiaries), franchisees, cooperative members, and licensees, and their
18 respective parents, subsidiaries, affiliated entities under common ownership,
19 predecessors, successors, assigns, directors, officers, agents, employees, and attorneys.

20 2.3 “Effective Date” means the date on which the Court enters this Consent
21 Judgment.

22 2.4 “Listed Chemical Flame Retardants” means Tris(1,3-Dichloro-2-propyl)
23 phosphate (“TDCPP”).

24 2.5 “Covered Products” include but are not limited to Coleman tents containing
25 Listed Chemical Flame Retardants TDCPP including but not limited to Coleman Highline
26 II tents, which were manufactured, distributed, and/or sold in California by Releasees.

27 **III. Injunctive Relief**

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1 **3.1 Clear and Reasonable Warnings for Covered Products.** As of the Effective
2 Date, no Covered Products may be manufactured for sale, distributed or sold in
3 California unless such Covered Products have a clear and reasonable warning on the
4 outer label of the Products. The warning shall state the following:

5 **WARNING:** This product contains chemicals known to the State of
6 California to cause cancer, birth defects or other reproductive harm.

7 The warning statement shall be prominently displayed on the Covered Products with such
8 conspicuousness, as compared with other words, statements, or designs as to render it
9 likely to be read and understood by an ordinary individual prior to sale. To the extent
10 that other warning statements are included on the outer label of a Covered Products, the
11 warning required herein shall be separated from the other warnings by a line that is at
12 least the same height as a line of text on the label.

13 **3.2 Certification.** Within 240 days of the Effective Date, Releasee, The
14 Coleman Company, shall provide a certification to Plaintiff acknowledging compliance
15 with the injunctive relief provisions of section 3.1. Certification by Releasee, The
16 Coleman Company, shall satisfy injunctive relief provisions applicable to Releasee, Wal-
17 Mart Stores. Inc.

18 **3.3 Penalty for non-compliance.** In the event that Releasees elect not to carry
19 out their compliance with Section 3.1 within 240 days following the Effective Date,
20 Releasees must make an additional payment of \$15,000 to Nicholas & Tomasevic, LLP
21 Client Trust Account, which shall be paid in a single lump sum. The full \$15,000 shall
22 constitute a penalty pursuant to California Health & Safety Code section 25249.7(b), such
23 money to be apportioned by Plaintiff in accordance with California Health & Safety Code
24 section 25249.12.
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1 **IV. Penalties and Payment**

2 4.1 Releasees shall initially pay to Plaintiff the total sum of Forty-Two Thousand,
3 Five Hundred Dollars (\$42,500) allocated as follows:

4 4.1.1 Six Thousand, Eight Hundred Dollars (\$6,800) shall constitute a
5 penalty pursuant to California Health and Safety Code section 25249.7(b), and such
6 money to be apportioned by Plaintiff in accordance with California Health & Safety Code
7 section 25249.12, with 75% of the funds remitted to the California Office of
8 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
9 penalty remitted to Zivkovic. Zivkovic’s counsel shall be responsible for remitting The
10 Coleman Company’s penalty payment under this Consent Judgment to OEHHA.

11 4.1.2 Thirty-Five Thousand, Seven Hundred Dollars (\$35,700) shall
12 constitute reimbursement of Plaintiff’s reasonable attorneys’ fees and costs. The Coleman
13 Company’s payment for these attorneys’ fees and costs shall be made in the form of check
14 made payable to Nicholas & Tomasevic, LLP Client Trust Account and is to be delivered
15 within 10 days following the Effective Date. The check shall be delivered to Craig
16 Nicholas as Nicholas & Tomasevic, LLP at the address set forth in Section VIII.

17 **V. Enforcement of Consent Judgment**

18 5.1 Plaintiff may, by motion or application for an order to show cause before the
19 Superior Court of San Francisco County, enforce the terms and conditions contained in
20 this Consent Judgment. Prior to bringing any motion or application to enforce the
21 requirements in Section III, Plaintiff shall provide Releasees with a Notice of Violation
22 and a copy of any documents, including test results, which purportedly support Plaintiff’s
23 Notice of Violation. The Parties shall then meet and confer regarding the basis for
24 Plaintiff’s anticipated motion or application in an attempt to resolve it informally,
25 including providing Releasees thirty (30) days to cure any alleged violation. Should such
26 attempt at informal resolution fail, Plaintiff may file his enforcement motion or
27 application. The prevailing party on any motion to enforce this Consent Judgment shall
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1 be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion
2 or application. This Consent Judgment may only be enforced by the Parties.

3 **VI. Modification of Consent Judgment**

4 6.1 This Consent Judgment may only be modified by a writing signed by all
5 Parties, or upon motion as approved by law.

6 **VII. Claims Covered and Release**

7 7.1 This Consent Judgment is a full, final, and binding resolution between
8 Plaintiff acting in the public interest, and The Coleman Company. Plaintiff waives all
9 rights to institute or participate in (directly or indirectly) any form of legal action and
10 releases and discharges the Releasees and Downstream Releasees, for any and all claims
11 alleged in the Notice arising from any violation of Proposition 65 that have been or could
12 have been asserted in the public interest against Releasees and Downstream Releasees,
13 regarding any alleged violation of Proposition 65 regarding the Covered Products and/or
14 the alleged failure to warn consumers about exposure to Listed Chemical Flame
15 Retardants in the Products manufactured, distributed, and/or sold prior to the Effective
16 Date.

17 7.2 Plaintiff, for himself, releases, waives, and forever discharges any and all
18 claims alleged in the Notice against Releasees and Downstream Releasees, including,
19 without limitation, all actions and causes of action in law and in equity, all suits, liabilities,
20 demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, but
21 not exclusively, investigation fees, expert fees, and attorneys' fees arising from any
22 violation of Proposition 65 that have been or could have been asserted regarding the failure
23 to warn about exposure to TDCPP in connection with Products manufactured, distributed,
24 and/or sold prior to the Effective Date.

25 7.3 Compliance with the terms of this Consent Judgment by Releasees shall
26 constitute compliance with Proposition 65 with respect to any alleged failure to warn about
27 any Listed Chemical Flame Retardants in Products manufactured, distributed and/or sold
28 after the Effective Date.

1 **VIII. Provision of Notice**

2 8.1 When any Party is entitled to receive any notice under this Consent Judgment,
3 the notice shall be sent by first class and electronic mail as follows:

4 8.1.1 **Notice to Releasees.** The person for Releasees to receive notice
5 pursuant to this Consent Judgment shall be:

6 Elizabeth McNulty, Esq.
7 **Archer Norris, APC**
8 4695 MacArthur Court, Ste. 350
9 Newport Beach, CA 92660
10 EMcNulty@archernorris.com

11 8.1.2 **Notice to Plaintiff.** The persons for Plaintiff to receive notice pursuant
12 to this Consent Judgment shall be:

13 Craig Nicholas, Esq.
14 Noam Glick, Esq.
15 **Nicholas & Tomasevic, LLP**
16 225 Broadway, Ste. 1900
17 San Diego, CA 92101
18 CNicholas@nicholaslaw.org
19 Noam@glicklawgroup.com

20 8.2 Any Party may modify the person and address to whom the notice is to be
21 sent by sending the other Parties notice by first class and electronic mail.

22 **IX. Court Approval**

23 9.1 This Consent Judgment shall become effective on the Effective Date,
24 provided however, that Plaintiff shall prepare and file a Motion for Approval of this
25 Consent Judgment and all Parties shall support approval of such Motion.

26 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force
27 or effect and shall not be introduced into evidence or otherwise used in any proceeding
28 for any purpose.

1 **X. Governing Law and Retention of Jurisdiction**

2 10.1 The terms and obligations arising from this Consent Judgment shall be
3 construed and enforced in accordance with the laws of the State of California.

4 10.2 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

6 **XI. Entire Agreement**

7 11.1 This Consent Judgment is intended by the Parties as the final and complete
8 expression of their agreement as of the Effective Date, and supersedes any and all prior
9 and contemporaneous agreements and understandings.

10 11.2 No representations or warranties have been made by either party to the other,
11 or by anyone else, except as expressly set forth in this Consent Judgment, and this Consent
12 Judgment is not being executed in reliance on any representation or warranty other than
13 those expressly set forth herein.

14 11.3 No waiver of any provision contained in this Consent Judgment shall be
15 deemed or construed as a waiver of any of the other provisions hereof, whether or not
16 similar, nor shall such waiver constitute a continuing waiver.

17 **XII. Authority to Stipulate to Consent Judgment**

18 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
19 authorized by the Party he or she represents to stipulate to this Consent Judgment and to
20 enter into and execute the Consent Judgment on behalf of the Party represented and to
21 legally bind that party.

22 **XIII. No Effect on Other Settlements**

23 13.1 Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
24 claim against another entity on terms that are different from those contained in this
25 Consent Judgment.
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1 **XIV. Execution in Counterparts**

2 14.1 The stipulation to this Consent Judgment may be executed in counterparts
3 and by means of facsimile, which taken together shall be deemed to constitute one
4 document.


5
6 **It Is So Stipulated:**

7
8 Dated: _____

_____ **Arthur Zivkovic**

9
10 Dated: 2/29/16

The Coleman Company, Inc.

11
12 
13 _____
14 *Marc P. Clements*

Printed Name

15 *Vice President - Litigation's Regulatory*
16 Title