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6 Attorneys for Plaintiff,
7 CONSUMER ADVOCACY GROUP, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 CONSUMER ADVOCACY GROUP, INC.,
11 in the public interest,

12
13 Plaintiff,

14 v.

15 TARGET CORPORATION, a Minnesota
16 Corporation; TARGET, a Business Entity
17 Form Unknown; and DOES 1-20,

18 Defendants.

CASE NO. BC713121

[Assigned for All Purposes to the Hon.
Rupert Byrdsong, Dept. 28]

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Complaint Filed: July 6, 2018

19 **1. INTRODUCTION**

20 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer
21 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the public interest,
22 and Defendant Southwire Company, LLC (referred to as “Defendant” or “Southwire”) with each
23 a Party to the action and collectively referred to as “Parties.”

24 **1.2 Defendant and Covered Products**

25 1.2.1 CAG alleges that Southwire is a Delaware Limited Liability Company, which
26 employs ten or more persons. For purposes of this Consent Judgment only, Southwire is deemed
27

1 a person in the course of doing business in California and subject to the provisions of the Safe
2 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section
3 25249.6 et seq. (“Proposition 65”).

4 1.2.2 CAG alleges that Defendant manufactures, sells, or distributes Extension Cords
5 (“Cords”) in California.

6 1.3 **Listed Chemicals**

7 1.3.1 Diisononyl Phthalate (“DINP”) has been listed by the State of California as a
8 chemical known to cause cancer.

9 1.4 **Notices of Violation**

10 1.4.1 On or about December 21, 2017, CAG served a “60-Day Notice of Intent to Sue
11 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“December 21,
12 2017 Notice”), AG# 2017-02702, that provided the recipients, specifically Target Corporation,
13 Target, Coleman Cable, Inc., Coleman Cable, LLC, and Coleman Cable Systems, Inc., with
14 notice of alleged violations of Health & Safety Code Section 25249.6 for failing to warn
15 individuals in California of exposures to DINP contained in certain Cords sold by Southwire in
16 California. No public enforcer has commenced or diligently prosecuted the allegations set forth
17 in that Notice.

18 1.4.2. On or about January 15, 2018, CAG served a “60-Day Notice of Intent to Sue for
19 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“January 15, 2018
20 Notice”), AG# 2018-00059, that provided the recipients, specifically Target Corporation, Target,
21 Coleman Cable, Inc., and Coleman Cable Systems, Inc., with notice of alleged violations of
22 Health & Safety Code Section 25249.6 for failing to warn individuals in California of exposures
23 to DINP contained in certain Cords sold by Southwire in California. No public enforcer has
24 commenced or diligently prosecuted the allegations set forth in that Notice.

25 1.4.3 On or about December 20, 2019, CAG served a “60-Day Notice of Intent to Sue
26 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“December 20,
27 2019 Notice”), AG# 2019-02399, that provided the recipients, specifically Southwire, with

1 notice of alleged violations of Health & Safety Code Section 25249.6 for failing to warn
2 individuals in California of exposures to DINP contained in certain Cords sold by Southwire in
3 California. No public enforcer has commenced or diligently prosecuted the allegations set forth
4 in that Notice.

5 **1.5 Complaint**

6 1.5.1 On July 6, 2018, CAG filed its Initial Complaint for civil penalties and
7 injunctive relief in Los Angeles County Superior Court, Case No. BC713121, against Target
8 Corporation and Target. CAG alleged, among other things that certain Cords violated
9 Proposition 65 due to the failure to give clear and reasonable warnings of alleged exposure to
10 DINP in certain Cords products distributed and/or sold in California.

11 1.5.2 On April 28, 2020 CAG filed a First Amended Complaint for civil
12 penalties and injunctive relief (“Complaint”) in Los Angeles County Superior Court, Case No.
13 BC713121, adding Southwire as a Defendant. The Complaint alleges, among other things, that
14 Defendant and Target Corporation violated Proposition 65 for allegedly failing to give clear and
15 reasonable warnings of alleged exposure to DINP in certain Cords products Southwire
16 distributed and/or sold in California.

17 **1.6 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
20 over Southwire as to the acts alleged in the Complaint, that venue is proper in the County of Los
21 Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
22 and resolution of the allegations against Southwire contained in the Complaint, and of all claims
23 which were or could have been raised by any person or entity based in whole or in part, directly
24 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

25 **1.7 No Admission**

26 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
27 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
28

1 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
2 shall be construed as an admission by the Parties of any material allegation in the Notices or the
3 Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind,
4 including without limitation, any admission concerning any alleged or actual violation of
5 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including
6 but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear and
7 reasonable warning” as used in Health and Safety Code Section 25249.6. Nothing in this Consent
8 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by the
9 Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing,
10 or liability by Southwire, its officers, directors, employees, or parent, subsidiary or affiliated
11 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding
12 or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall
13 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
14 other or future legal proceeding, except as expressly provided in this Consent Judgment.

15 **2. DEFINITIONS**

16 2.1 “Covered Products” are: (1) “Part Number 277563 - Outdoor Patio Cord 8
17 ft./2.4m, Woods, White Power Cord, 16 gauge caliber, Medium Duty AWG 16/3 SJTW,
18 13A/125V/1625W, CCI Coleman Cable Inc., Made in the Philippines, UPC: 078693075636”,
19 listed in the Notices as “Woods”, “Outdoor Patio Cord 8ft. 2.4m”, “Cable para patio”, White
20 Power Cord, “3 WIRE ALAMBRES”, “16 GAUGE CALIBRE”, “Medium Duty”, “AWG 16/3
21 SJTW”, “13A/125V/1625W”, “277563”, “CCI Coleman Cable Inc.”, “Made in the Philippines”,
22 “www.colemancable.com”, UPC: 078693075636; and (2) “Part Number 27260 - Outdoor Cord,
23 Outdoor Workshop Taller, 8 ft./2.4m, Woods, 16 gauge caliber, Medium Duty, AWG16/3
24 SJTW, 13A/125V/1625W, Coleman Cable, Inc. Made in the Philippines, UPC: 078693002601,
25 listed in the Notices as “Woods”, Outdoor Workshop Taller”; “8ft. 2.4m”; “3 wire alambres”;
26 “16-gauge calibre”; “Medium Duty Nivel Medio”; “13 AMPS”; “AWG 16/3 SJTW”;

1 “13A/125V1625W”; ‘Coleman Cable, Inc. Waukegan, IL 60085’; ‘Made in the Philippines’; ‘0
2 78693 00260 1.’ The Covered Products are limited to those sold by or supplied by Southwire.

3 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
4 Court.

5 2.3 “DINP” means Diisononyl Phthalate.


6 2.4 “Listed Chemical” means DINP.

7 2.5 “Notices” means the December 21, 2017 Notice, January 15, 2018 Notice, and
8 December 20, 2019 Notice.

9 **3. INJUNCTIVE RELIEF/REFORMULATION**

10 3.1 Except for Covered Products described in Section 3.2 below, which must comply
11 with Section 3.2 after the Effective Date, Southwire shall not sell, offer for sale in California, or
12 ship for sale in California any Covered Products unless the level of DINP in the Covered
13 Products does not exceed more than 0.1% (1,000 parts per million) by weight.

14 3.2 For any Covered Products still existing in Southwire’s inventory as of the Effective
15 Date, Southwire shall place a Proposition 65 compliant warning on them. Any warning provided
16 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products,
17 and be prominently placed with such conspicuousness as compared with other words, statements,
18 designs, or devices as to render it likely to be read and understood by an ordinary individual
19 under customary conditions before purchase or use. The equilateral triangle pictogram shall be in
20 yellow with a black exclamation mark provided, however, the pictogram may be in white instead
21 of yellow if the Covered Product label does not contain the color yellow. The warning shall
22 state:

23  **WARNING:** This product can expose you to chemicals including DINP,
24 known to the State of California to cause cancer. For more information go to
25 www.P65Warnings.ca.gov

26 **4. SETTLEMENT PAYMENT**

1 **4.1 Payment and Due Date:** Within fifteen (15) business days of the Effective Date,
2 Defendant shall pay a total of one hundred thirty thousand dollars and zero cents (\$130,000) in
3 full and complete settlement of any and all claims for civil penalties, damages, attorney’s fees,
4 expert fees or any other claim for costs, expenses or monetary relief of any kind for claims that
5 were or could have been asserted in the Notices or Complaint, as follows:

6 **4.1.1 Civil Penalty:** Defendant shall issue two separate checks totaling \$14,292.00 as
7 follows for alleged civil penalties pursuant to Health & Safety Code Section 25249.12:

8 (a) Defendant will issue one check made payable to the State of California’s Office of
9 Environmental Health Hazard Assessment (“OEHHA”) in the amount of \$10,719.00
10 representing 75% of the total civil penalty and Defendant will issue a second check to CAG in
11 the amount of \$3,573.00 representing 25% of the total civil penalty;

12 (b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a
13 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
14 \$10,719.00. Defendant will also issue a 1099 to CAG in the amount of \$3,573.00 and deliver it
15 to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,
16 California 90212.

17 **4.1.2 Additional Settlement Payments:** Southwire shall issue one check for
18 \$10,708.00 to “Consumer Advocacy Group, Inc.” pursuant to Health & Safety Code Section
19 25249.7(b) and California Code of Regulations, Title 11 Section 3203(d). CAG will use this
20 portion of the Total Settlement Payment as follows, eighty five percent (85%) for fees of
21 investigation, purchasing, and testing for the Proposition 65 Listed Chemical in various products,
22 and for expert fees for evaluating exposures through various mediums, including but not limited
23 to consumer product, occupational, and environmental exposures to the Proposition 65 Listed
24 Chemical, and the cost of hiring, consulting, and retaining experts who assist with the extensive
25 scientific analysis necessary for those files in litigation and to offset the costs of future litigation
26 enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for administrative
27 costs incurred during investigation and litigation to reduce the public’s exposure to the
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1 Proposition 65 Listed Chemical by notifying those persons and/or entities believed to be
2 responsible for such exposures and attempting to persuade those persons and/or entities to
3 reformulate their products or the source of exposure to completely eliminate or lower the level of
4 the Proposition 65 Listed Chemical including but not limited to costs of documentation, tracking
5 of products investigated, storage of products, website enhancement and maintenance, computer
6 and software maintenance, investigative equipment, CAG’s member’s time for work done on
7 investigations, office supplies, mailing supplies and postage. Within 30 days of a request from
8 the Attorney General, CAG shall provide to the Attorney General copies of documentation
9 demonstrating how the above funds have been spent. CAG shall be solely responsible for
10 ensuring the proper expenditure of such additional settlement payment.

11 4.1.3 **Reimbursement of Attorney Fees and Costs:** Defendant shall issue a check in
12 the amount of \$105,000 payable to “Yeroushalmi & Yeroushalmi” as complete reimbursement
13 for any and all reasonable investigation fees and costs, attorneys’ fees, expert fees, and any and
14 all other costs and expenses incurred as a result of investigating, bringing this matter to
15 Southwire’s attention, litigating, negotiating a settlement in the public interest, and seeking and
16 obtaining court approval of this Consent Judgment.

17 4.2 Other than the payment to OEHHA described above, all payments referenced in
18 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
19 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
20 payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard
21 Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812.
22 Southwire shall provide written confirmation to CAG concurrently with the payment to OEHHA.

23 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

24 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
25 behalf of itself and in the public interest, and Southwire and their owners, officers, directors,
26 insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners,
27 affiliates, sister companies, predecessors, and their successors and assigns (“Defendant
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1 Releasees”), and all entities to whom Southwire directly or indirectly distribute or sell Covered
2 Products, including, but not limited to, downstream distributors, suppliers, wholesalers,
3 customers, retailers, marketplace hosts, franchisees, cooperative members, licensees, and the
4 successors and assigns of any of them, who may use, maintain, distribute or sell Covered
5 Products (“Downstream Defendant Releasees”), of all claims for alleged or actual violations of
6 Proposition 65 for alleged exposures to the Listed Chemical from the Covered Products
7 manufactured, distributed or sold by Southwire up through the Effective Date as set forth in the
8 Notices and Complaint. Southwire and Defendant Releasees’ compliance with this Consent
9 Judgment shall constitute compliance with Proposition 65 with respect to alleged exposures to
10 the Listed Chemical from the Covered Products sold by Defendant Releasees or Downstream
11 Defendant Releasees after the Effective Date. Nothing in this Section affects CAG’s right to
12 commence or prosecute an action under Proposition 65 against any person other than Southwire,
13 Defendant Releasees, or Downstream Defendant Releasees.

14 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
15 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
16 indirectly, any form of legal action and releases all claims, including, without limitation, all
17 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
18 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
19 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,
20 fixed or contingent (collectively “Claims”), against the Released Parties arising from any actual
21 or alleged violation of Proposition 65 or any other statutory or common law claim regarding the
22 Covered Products manufactured, distributed or sold by the Released Parties through the Effective
23 Date regarding any actual or alleged failure to warn about exposure to the Listed Chemical from
24 the Covered Products. In furtherance of the foregoing, CAG on behalf of itself only, hereby
25 waives any and all rights and benefits which it now has, or in the future may have, conferred
26 upon it with respect to Claims regarding the Covered Products manufactured, distributed or sold
27 by the Released Parties through the Effective Date arising from any violation of Proposition 65
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1 or any other statutory or common law regarding the failure to warn about exposure to the Listed
2 Chemical from the Covered Products by virtue of the provisions of section 1542 of the California
3 Civil Code, which provides as follows:

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

10 CAG understands and acknowledges that the significance and consequence of this waiver of
11 California Civil Code Section 1542 is that even if CAG suffers future damages arising out of or
12 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
13 violation of Proposition 65 or any other statutory or common law regarding the Covered
14 Products manufactured, distributed or sold by the Released Parties through the Effective Date
15 regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the
16 Covered Products, CAG will not be able to make any claim for those damages, penalties or other
17 relief against the Released Parties. Furthermore, CAG acknowledges that it intends these
18 consequences for any such Claims arising from any violation of Proposition 65 or any other
19 statutory or common law regarding the failure to warn about exposure to the Listed Chemical
20 from the Covered Products as may exist as of the date of this release but which CAG does not
21 know exist, and which, if known, would materially affect their decision to enter into this Consent
22 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,
23 error, negligence, or any other cause.

24 **6. ENTRY OF CONSENT JUDGMENT**

25 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
26 California Health & Safety Code Section 25249.7(f). The Parties agree to act in good faith to
27 obtain Court approval of the Consent Judgment. Upon entry of the Consent Judgment, CAG and
28 Southwire waive their respective rights to a hearing and trial on the allegations in the Notices and
Complaint.

1 10.1 This Consent Judgment contains the sole and entire agreement and understanding
2 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
3 negotiations, commitments and understandings related hereto. No representations, oral or
4 otherwise, express or implied, other than those contained herein have been made by any party
5 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
6 deemed to exist or to bind any of the Parties.

7 **11. ATTORNEY FEES**

8 11.1 Except as specifically provided in Sections 4.1.3 and 8.2, each Party shall bear its
9 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

10 **12. GOVERNING LAW**

11 12.1 The validity, construction, terms, and performance of this Consent Judgment shall
12 be governed by the laws of the State of California, without reference to any conflicts of law
13 provisions of California law.

14 12.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
15 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
16 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
17 rendered inapplicable by reason of law generally as to the Covered Products, then Southwire
18 may provide written notice to CAG of any asserted change in the law, and shall have no further
19 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
20 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
21 Southwire from any obligation to comply with any other pertinent state or federal law or
22 regulation.

23 12.3 The Parties, including their counsel, have participated in the preparation of this
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
25 Consent Judgment was subject to revision and modification by the Parties and has been accepted
26 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
27 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result

1 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
2 agrees that any statute or rule of construction providing that ambiguities are to be resolved
3 against the drafting Party should not be employed in the interpretation of this Consent Judgment
4 and, in this regard, the Parties hereby waive California Civil Code Section 1654.

5 **13. EXECUTION AND COUNTERPARTS**

6 13.1 This Consent Judgment may be executed in counterparts and by means of
7 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
8 one document and have the same force and effect as original signatures.

9 **14. NOTICES**

10 14.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail.

11 If to CAG:

12 Reuben Yeroushalmi, Esq.
13 Yeroushalmi & Yeroushalmi
14 9100 Wilshire Boulevard, Suite 240W
15 Beverly Hills, CA 90212

16 If to Defendant SOUTHWIRE COMPANY, LLC:

17 Robert Schuda
18 Dentons USA, LLP
19 601 S. Figueroa Street, Suite 2500
20 Los Angeles, CA 90017

21 **15. AUTHORITY TO STIPULATE**

22 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
23 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf
24 of the Party represented and legally to bind that party.
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26
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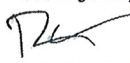
1 AGREED TO:

AGREED TO:

2
3 Date: June 11, 2020

June 10, 2020
Date: _____

4
5 Michael Marcus

DocuSigned by:

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6
7 Name: Michael Marcus

Name: Brandon Moss

8
9 Title: Director

Title: EVP, Tools & Assembled Products

10 CONSUMER ADVOCACY GROUP,
11 INC.

SOUTHWIRE COMPANY, LLC

12
13 **IT IS SO ORDERED.**

14
15 Date: _____

The Hon. Rupert A. Byrdsong
JUDGE OF THE SUPERIOR COURT