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COLEMAN MACHINE, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF ALAMEDA

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MICHAEL DIPIRRO,

No. H214430-2

19

Plaintiff,

[PROPOSED] CONSENT JUDGMENT
RESOLVING ALL CLAIMS

20

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v.

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COLEMAN MACHINE, INC.; and DOES 1
through 1000,

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Defendants.

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1 This Consent Judgment (“Judgment”) is entered into by and between Michael
2 DiPirro, a California citizen, and Coleman Machine, Inc., a Michigan corporation (“Coleman
3 Machine”). Together DiPirro and Coleman Machine shall be referred to as the “Parties.” It is
4 entered into on the basis of the following facts, understandings and intentions of the Parties.

5 A. Michael DiPirro is an individual residing in San Francisco, California,
6 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
7 reducing or eliminating hazardous substances contained in consumer and industrial products;

8 B. Coleman Machine is a company that currently sells certain ballast and
9 other lead balancing products in the State of California that contain chemicals listed pursuant to
10 Proposition 65 (California Health & Safety Code §25249.5 et seq.) including lead (or lead
11 compounds) (the “Listed Chemical”);

12 C. The products that contain one or more of the “Listed Chemical” and which
13 are covered by this Consent Judgment consist of Ballast and Other Lead Balancing Products (the
14 “Products”). The Products have been sold or offered for sale by Coleman Machine for use in
15 California during the period from May 1, 1996 to present; and

16 D. On May 1, 2000, Michael DiPirro first served Coleman Machine and other
17 public enforcement agencies with a document entitled “60-Day Notice of Violation” which
18 provided Coleman Machine and such public enforcers with notice that Coleman Machine was
19 allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers
20 that certain products it sells in California expose users to Proposition 65-listed chemicals; and

21 E. On July 13, 2000, Michael DiPirro filed a complaint entitled Michael
22 DiPirro v. Coleman Machine, Inc., et al. in the Alameda County Superior Court, naming
23 Coleman Machine as a defendant and alleging violations of Business & Professions Code
24 §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly
25 have been exposed to the “Listed Chemical” contained in certain Coleman Machine products.

26 Coleman Machine and DiPirro have stipulated to this Consent Judgment

1 F. Nothing in this Consent Judgment shall be construed as an admission by
2 Coleman Machine of any fact, finding, issue of law, or violation of law, nor shall compliance
3 with this Consent Judgment constitute or be construed as an admission by Coleman Machine of
4 any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not
5 diminish or otherwise affect the obligations, responsibilities, and duties of Coleman Machine
6 under this Consent Judgment.

7 The Parties agree to the follow terms and conditions:

8 1. **Product Warnings.** Coleman Machine shall initiate revisions to its health
9 hazard warnings for its Products to provide the language set forth in the section 1.1 below.
10 Beginning on November 15, 2000, Coleman Machine agrees that it will not knowingly ship (or
11 cause to be shipped) any Products containing the Listed Chemical for sale in the State of
12 California unless such Products comply with section 1.1 below:

13 1.1 For all Products containing lead (or lead compounds), such
14 Products shall bear the following warning statement:

15 **“WARNING: This product contains lead, a chemical known to the**
16 **State of California to cause cancer and birth defects (or**
17 **other reproductive harm)”;**

18 or

19 **“WARNING: This product contains a chemical known to the State of**
20 **California to cause cancer and birth defects (or other**
21 **reproductive harm)”;**

22 The warning statement shall be prominently placed upon the Product’s
23 label, packaging, or accompanying materials with such conspicuousness, as compared with other
24 words, statements, designs or devices on the label as to render it likely to be read and understood
25 by an ordinary individual under customary conditions of purchase or use.

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1 **2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to
2 Health & Safety Code §25249.7(b), Coleman Machine shall pay a civil penalty of \$2,000. The
3 first payment of \$400 shall be paid on or before November 22, 2000. The second payment of
4 \$1,600 shall be made on or before September 15, 2001. However, the second payment shall be
5 waived in full if Coleman Machine adds a warning in compliance with Paragraph 1.1 above to its
6 online and off-line catalogues (in addition to its product labeling, packaging, or accompanying
7 materials) by August 15, 2001. In order to obtain the waiver, written certification of the
8 additional warning must be provided by Coleman Machine to DiPirro by August 30, 2001. The
9 penalty payment is to be made payable to “Chanler Law Group In Trust For Michael DiPirro”.
10 Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code
11 §25192, with 75% of these funds remitted to the State of California’s Department of Toxic
12 Substances Control.

13 **3. Reimbursement Of Fees And Costs.** The Parties acknowledge that
14 DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to
15 be reimbursed, thereby leaving this open issue to be resolved after the material terms of the
16 agreement had been reached, and the matter settled. Coleman Machine then expressed a desire to
17 resolve the fee and cost issue concurrently with other settlement terms.

18 Coleman Machine shall reimburse DiPirro for his fees and costs incurred as a
19 result of investigating, bringing this matter to Coleman’s attention, litigating and negotiating a
20 settlement in the public interest. Coleman Machine shall pay the total sum of \$10,504.50 for
21 investigation fees, attorneys’ fees, and litigation costs. Coleman Machine agrees to pay
22 \$2626.14 on or before November 22, 2000, followed by three equal payments of \$2626.12 to be
23 delivered to the Chanler Law Group on a monthly basis until satisfied. The monthly payments
24 shall be delivered on or before the fifteenth day of each subsequent calendar month, with the first
25 such payment due on or before December 15, 2000. Payment should be made payable to the
26 “Chanler Law Group”.

1 4. **Michael DiPirro's Release Of Coleman Machine.** Michael DiPirro, by
2 this Consent Judgment, on behalf of himself and the citizens of the State of California, waives all
3 rights to institute or participate in, directly or indirectly, any form of legal action, and releases all
4 claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Coleman
5 Machine and its distributors, retailers, customers, directors, officers, employees, affiliates,
6 successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200
7 et seq. based on Coleman Machine's alleged failure to warn about exposure to the Listed
8 Chemical contained in any of the Products.

9 5. **Coleman Machine's Release Of Michael DiPirro.** Coleman Machine,
10 by this Consent Judgment, waives all rights to institute any form of legal action against Michael
11 DiPirro, for all actions or statements made by Michael DiPirro in the course of seeking
12 enforcement by this action of Proposition 65 or Business & Profession Code §17200 against
13 Coleman Machine.

14 6. **Stipulated Judgment.** If, for any reason, this Consent Judgment is not
15 approved by the Court, this Consent Judgment shall be deemed null and void, and all payments
16 made by Coleman Machine shall be returned in full within five (5) days of notification of the
17 Court's failure to approve this Consent Judgment.

18 7. **Coleman Machine Sales Data.** Coleman Machine understands that the
19 sales data provided to counsel for DiPirro by Coleman Machine was a material factor upon
20 which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety
21 Code §25249.7(b) in this Consent Judgment. To the best of Coleman Machine's knowledge, the
22 sales data provided is true and accurate. In the event that DiPirro discovers facts which
23 demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the
24 Parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Coleman
25 Machine's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data.
26 If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to

1 rescind the Consent Judgment and re-institute an enforcement action against Coleman Machine,
2 provided that all sums paid by Coleman Machine pursuant to paragraphs 2 and 3 are returned to
3 Coleman Machine within ten (10) days from the date on which DiPirro notifies Coleman
4 Machine of his intent to rescind this Consent Judgment. In such case, all applicable statutes of
5 limitation shall be deemed tolled for the period between the date DiPirro filed the instant action
6 and the date DiPirro notifies Coleman Machine that he is rescinding this Consent Judgment
7 pursuant to this Paragraph.

8 **8. Product Characterization.** Coleman Machine acknowledges that each of
9 the Products contains lead (or lead compounds) and Plaintiff alleges that the customary use or
10 application of the Products is likely to expose users to lead (or lead compounds), a substance
11 known to the State of California to cause birth defects (or other reproductive harm). In the event
12 that Coleman Machine obtains analytical, risk assessment or other data (“Exposure Data”) that
13 shows an exposure to any or all Products will have “no observable effect,” as such standard is
14 applicable and as defined under Health & Safety Code §25249.10(c) and Coleman Machine
15 seeks to eliminate the warnings, then Coleman Machine shall provide DiPirro with ninety (90)
16 days prior written notice of its intent to limit or eliminate the warning provisions under this
17 Consent Judgment based on the Exposure Data and shall provide DiPirro with all such
18 supporting Exposure Data. Within ninety (90) days of receipt of Coleman Machine Exposure
19 Data, DiPirro shall provide Coleman Machine with written notice of his intent to challenge the
20 Exposure Data (in the event that he chooses to make such a challenge). If DiPirro fails to
21 provide Coleman Machine written notice of his intent to challenge the Exposure Data within
22 ninety (90) days of receipt of Coleman Machine’s notice and the Exposure Data, DiPirro shall
23 waive all rights to challenge the Exposure Data, and Coleman Machine shall be entitled to limit
24 or eliminate the warning provisions required under this Consent Judgment with respect to those
25 Product(s) to which the Exposure Data applies. If DiPirro timely notifies Coleman Machine of
26 his intent to challenge the Exposure Data, DiPirro and Coleman Machine (a) may stop its efforts

1 All correspondence to Coleman Machine shall be mailed to:

2 Rick R. Rothman, Esq.
3 McCutchen, Doyle, Brown & Enersen, LLP
355 South Grand Avenue, Suite 4400
4 Los Angeles, CA 80071
(213) 680-6590

5 Either Party may at any time change the name and address of its
6 designated representative to receive notice by providing notice of such change to the other
7 Party's designated representative.

8 **13. Compliance With Reporting Requirements.** The Parties agree to
9 comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).
10 As of the date of this Consent Judgment, the California Attorney General's reporting forms are
11 not available. Plaintiff represents, however, that his counsel will send a copy of this Consent
12 Judgment to the California Attorney General's Office upon notice of its entry by the Alameda
13 County Superior Court.

14 **14. Counterparts and Facsimile.** This Consent Judgment may be executed
15 in counterparts and facsimile, each of which shall be deemed an original, and all of which, when
16 taken together, shall constitute one and the same document.

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

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IN WITNESS HEREOF, the Parties hereto execute this Consent Judgment, and
the Court enters it, as of the date last written below.

DATED: 11/16/00


MICHAEL DIPIRRO

DATED: _____

COLEMAN MACHINE, INC.

By: _____
GLENN MYERS
Customer Service, Sales & Marketing Manager

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: _____

By: _____
JUDGE OF THE SUPERIOR COURT

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IN WITNESS HEREOF, the Parties hereto execute this Consent Judgment, and
the Court enters it, as of the date last written below.

DATED: _____

MICHAEL DIPIRRO

DATED: 11/20/2000

COLEMAN MACHINE, INC.

By: 
GLENN MYERS
Customer Service, Sales & Marketing Manager

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: NOV 27 2000

By: Dawn B. Girard by F.H.
JUDGE OF THE SUPERIOR COURT