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5 Attorneys for Plaintiff  
MICHAEL DIPIRRO  
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF ALAMEDA  
9

10 MICHAEL DIPIRRO, ) No. H220120-7  
 )  
11 Plaintiff, )  
 )  
12 v. )  
 ) CONSENT JUDGMENT  
13 TARGET CORPORATION; THE COLEMAN )  
COMPANY, INC.; and DOES 1 )  
14 through 1000, )  
 )  
15 Defendants. )

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17  
18 This Consent Judgment ("Agreement" or "Consent Judgment")  
19 is entered into by and between Michael DiPirro, Target  
20 Corporation, a Delaware corporation and The Coleman Company,  
21 Inc., a Delaware corporation, ("Coleman") as of December 14,  
22 2001 (the "Effective Date"). The parties agree to the  
23 following terms and conditions:

24 **WHEREAS:**

25 A. Michael DiPirro is an individual residing in  
26 San Francisco, California, who seeks to promote awareness of  
27 exposures to toxic chemicals and improve human health by

28 CONSENT JUDGMENT

1 reducing or eliminating hazardous a substance contained in  
2 consumer and industrial products;

3 B. Coleman is a company that currently  
4 manufactures, distributes and sells certain adhesives and  
5 other adhesive repair products as set forth in Exhibit A that  
6 contain toluene, a substance known to the State of California  
7 to cause birth defects (or other reproductive harm);

8 C. A list of the products, which contain toluene  
9 (the "Listed Chemical") and which are covered by this  
10 Agreement is provided in Exhibit A (the "Products"). The  
11 Products have been distributed and sold by Coleman in  
12 California since May 31, 1997; and

13 D. On January 12, 2001, Michael DiPirro first  
14 served Coleman and other public enforcement agencies with a  
15 document entitled "60-Day Notice of Violation" which provided  
16 Coleman and such public enforcers with notice that Coleman was  
17 in violation of Health & Safety Code §25249.6 for allegedly  
18 failing to warn purchasers that certain products it sells in  
19 California expose users to the Listed Chemical; and

20 E. On May 31, 2001, Michael DiPirro filed a  
21 complaint entitled Michael DiPirro v. Target Corporation;  
22 Coleman Company, et al. in the Alameda County Superior Court,  
23 naming Coleman as a defendant and alleging violations of  
24 Business & Professions Code §17200 and Health & Safety Code  
25 §25249.6 on behalf of the general public and individuals in  
26 California who allegedly have been exposed to one or more  
27 chemicals listed pursuant to Proposition 65 contained in

1 certain Coleman products.

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

10 G. Sunbeam Corporation and its domestic operating  
11 subsidiaries, including Coleman, have reached an agreement  
12 with their secured creditors to restructure Sunbeam's debts  
13 and reorganize the company under Chapter 11 of the U.S.  
14 Bankruptcy Code. Petitions for relief under chapter 11 have  
15 been filed with the U.S. Bankruptcy Court for the Southern  
16 district of New York ("Bankruptcy Court") in the case In re:  
17 AI Realty Marketing of New York, Inc., et al., Cases 01-40252  
18 (AJG) through 01-40290 (AJG) (Jointly Administered). Pursuant  
19 to the Order of the Bankruptcy Court, all claims pending  
20 against Coleman are stayed unless the litigants obtain court  
21 approval to lift the Stay.

22  
23 **NOW THEREFORE, MICHAEL DIPIRRO AND COLEMAN AGREE AS FOLLOWS:**

24 **1. Product Warnings.** Coleman shall begin to take  
25 steps with regard to its packaging and sale of the Products in  
26 California to provide the language set forth in section 1.1  
27 below. Beginning within 90 days of the Effective Date,

28 CONSENT JUDGMENT

1 Coleman agrees that it will not knowingly package or sell any  
2 Products containing the Listed Chemical in the State of  
3 California unless such Products comply with section 1.1 below:

4 1.1 For all Products which contain toluene, one of  
5 the following warnings shall be given:

6 "CALIFORNIA PROPOSITION 65 WARNING: This  
7 product contains toluene, a chemical  
8 known to the State of California to  
9 cause birth defects (or other  
10 reproductive harm).";

11 or

12 "CALIFORNIA PROPOSITION 65 WARNING: This  
13 product contains a chemical known to  
14 the State of California to cause  
15 birth defects (or other reproductive  
16 harm).";

17 The warning statement shall be affixed by way  
18 of adhesive sticker or otherwise printed on either the front  
19 or back of the Product packaging, at Coleman's option, with  
20 such conspicuousness as compared with other words, statements,  
21 designs or devices as to render it likely to be read and  
22 understood by an ordinary individual under customary  
23 conditions of purchase or use.

## 20 **2. Payment Pursuant To Health & Safety Code**

21 **§25249.7(b)**. Pursuant to Health & Safety Code §25249.7(b),  
22 Coleman shall pay a civil penalty of \$1,250 (twelve hundred  
23 fifty dollars) within thirty (30) calendar days of the  
24 Bankruptcy Court's lift of the Stay. Dipirro's counsel shall  
25 hold the penalty payment in trust until the Alameda County  
26 Superior Court approves and enters this Consent Judgment. The  
27 penalty payment is to be made payable to "Chanler Law Group In

1 Trust For Michael DiPirro". If this Consent Judgment is not  
2 approved by the Court, DiPirro will return all funds, with  
3 interest thereon at a rate of six percent (6%) per annum,  
4 within ten (10) calendar days of notice of the Court's  
5 decision. Penalty monies shall be apportioned by DiPirro in  
6 accordance with Health & Safety Code §25192, with 75% of these  
7 funds remitted to the State of California's Department of  
8 Toxic A substance Control.

9 Coleman understands that the payment schedule as  
10 stated in this Consent Judgment is a material factor upon  
11 which DiPirro and his counsel have relied in entering into  
12 this Consent Judgment. Coleman agrees that all payments will  
13 be made in a timely manner in accordance with the payment due  
14 dates. Coleman will be given a five (5) calendar day grace  
15 period from the date payment is due. Coleman agrees to pay  
16 Michael DiPirro and his counsel a \$250 per calendar day fee  
17 for each day the payment is received after the grace period  
18 ends. For purposes of this paragraph, each new day (requiring  
19 an additional \$250 payment) will begin at 5 p.m. (PST).

20 **3. Reimbursement Of Fees And Costs.** The parties  
21 acknowledge that DiPirro offered to resolve the dispute  
22 without reaching terms on the amount of fees and costs to be  
23 reimbursed, thereby leaving this open issue to be resolved  
24 after the material terms of the agreement had been reached,  
25 and the matter settled. Coleman then expressed a desire to  
26 resolve the fee and cost issue concurrently with other  
27 settlement terms, so the parties tried to reach an accord on

1 the compensation due to DiPirro and his counsel under the  
2 private attorney general doctrine codified at C.C.P. §1021.5.

3 Coleman shall reimburse DiPirro and his counsel for  
4 his fees and costs, incurred as a result of investigating,  
5 bringing this matter to Coleman's attention, litigating and  
6 negotiating a settlement in the public interest. Coleman  
7 shall pay \$13,750 (thirteen thousand seven hundred and fifty  
8 dollars) for all attorneys' fees, expert and investigation  
9 fees, and litigation costs within five (5) calendar days of  
10 the Effective Date. Such sum shall be held in trust by  
11 DiPirro's counsel until the Alameda County Superior Court  
12 approves and enters the Consent Judgment. If this Consent  
13 Judgment is not approved by the Court, DiPirro will return all  
14 funds, with interest thereon at a rate of six percent (6%) per  
15 annum, within ten (10) calendar days of notice of the Court's  
16 decision. Payment should be made payable to the "Chanler Law  
17 Group".

18 Coleman understands that the payment schedule as  
19 stated in this Consent Judgment is a material factor upon  
20 which DiPirro and his counsel have relied in entering into  
21 this Consent Judgment. Coleman agrees that all payments will  
22 be made in a timely manner in accordance with the payment due  
23 dates. Coleman will be given a five (5) calendar day grace  
24 period from the date payment is due. Coleman agrees to pay  
25 Michael DiPirro and his counsel a \$250 per calendar day fee  
26 for each day the payment is received after the grace period  
27 ends. For purposes of this paragraph, each new day (requiring

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CONSENT JUDGMENT

1 an additional \$250 payment) will begin at 5 p.m. (PST).

2 **3.1 Additional Contingent Fees and Costs.** In the event  
3 that the California Attorney General's office, pursuant to 11  
4 CRC 3000, *et seq.*, serves objections to this Consent Judgment  
5 on either of the parties, such that it requires plaintiff to  
6 incur additional legal fees or costs relating to this Consent  
7 Judgment, Defendant shall reimburse DiPirro for any fees and  
8 costs incurred by DiPirro and his counsel in excess of \$1,500  
9 from the date of receipt of the Attorney General's objections,  
10 provided that DiPirro first obtains Defendant's consent to  
11 proceed with the Consent Judgment under these circumstances  
12 and further provided that the total amount of any such  
13 additional fees and costs do not exceed a total of \$3,000.  
14 Such additional legal fees or costs relating to this Consent  
15 Judgment include, but are not limited to: further editing and  
16 finalizing of the Consent Judgment; corresponding with  
17 opposing counsel; retention of experts; presenting of the  
18 Consent Judgment (or any modifications thereof) to the  
19 Attorney General for further comment; and any briefing and/or  
20 appearance before the Court related to this Consent Judgment.

21 Plaintiff agrees to document all fees and costs incurred from  
22 the date of receipt of the Attorney General's objections  
23 through the date of court approval of the Consent Judgment.  
24 Prior to receiving such documentation, Defendant agrees to  
25 enter into a letter agreement in which the parties agree that,  
26 by transmitting such information, no privilege will be waived  
27 by DiPirro or his counsel. Such additional reimbursement of

1 legal fees and costs shall be due within ten (10) calendar  
2 days after receipt of both notice of Court approval of the  
3 Consent Judgment and final billing statement from plaintiff.  
4 Defendant has the right to object to such reimbursement and  
5 may submit the resolution of this issue to the American  
6 Arbitration Association (AAA) in Northern California to  
7 determine the reasonableness of the additional fees and costs  
8 sought, provided that such notice of objection or decision to  
9 arbitrate is received by plaintiff by the end of the ten (10)  
10 calendar days. If an arbitration notice is not filed with AAA  
11 in a timely manner, DiPirro may file a motion with the Court  
12 for fees and costs pursuant to CCP §1021.5 and this Consent  
13 Judgment associated with any additional fees and costs  
14 incurred as set forth in this paragraph.

15 **4. Michael DiPirro's Release Of Coleman.** Michael  
16 DiPirro, by this Agreement, on behalf of himself, his agents,  
17 representatives, attorneys, assigns and the general public,  
18 waives all rights to institute or participate in, directly or  
19 indirectly, any form of legal action, and releases all claims,  
20 liabilities, obligations, losses, costs, expenses, fines and  
21 damages, against Coleman and its distributors, customers,  
22 directors, officers, employees, parents, affiliates,  
23 subsidiaries, successors and assigns, whether under  
24 Proposition 65 or the California Business & Profession Code  
25 §17200 et seq. based on Coleman's alleged failure to warn  
26 about exposure to the Listed Chemical contained in any of the  
27 Products.

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1                   **5. Coleman's Release Of Michael DiPirro.** Coleman,  
2 by this Agreement, waives all rights to institute any form of  
3 legal action against Michael DiPirro and his attorneys or  
4 representatives, for all actions or statements made by Michael  
5 DiPirro, and his attorneys or representatives, in the course  
6 of seeking enforcement of Proposition 65 or the California  
7 Business & Profession Code §17200 against Coleman in this  
8 action.

9                   **6. Court Approval.** Upon execution of this  
10 agreement, Coleman will petition the Bankruptcy Court to  
11 approve this Agreement and lift the stay as to the claims  
12 resolved herein. The terms of this Consent Judgment are  
13 expressly conditioned on the Bankruptcy Court's approval of  
14 the Agreement. After the Bankruptcy Court has approved the  
15 Agreement and lifted the stay as to the claims resolved herein  
16 (and provided that 30 days have elapsed following its  
17 provision to the Office of the California Attorney General  
18 pursuant to Paragraph 13 herein), this Consent Judgment shall  
19 be submitted to the Court for approval. If, for any reason,  
20 despite Sunbeam's good faith efforts, the Bankruptcy Court  
21 fails to approve the Agreement and to lift the stay, or, if  
22 for any reason, the Consent Judgment is not approved by the  
23 Court, this Agreement shall be deemed null and void, except  
24 for the provisions governing the return of proceeds paid by  
25 Coleman and held in trust for Dipirro pursuant to Sections 2  
26 and 3 above.

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1                   **7. Coleman Sales Data.** Coleman understands that  
2 the sales data provided to counsel for DiPirro by Coleman was  
3 a material factor upon which DiPirro has relied to determine  
4 the amount of payments made pursuant to Health & Safety Code  
5 §25249.7(b) in this Agreement. To the best of Coleman's  
6 knowledge, the sales data provided is true and accurate. In  
7 the event that DiPirro discovers facts which demonstrate to a  
8 reasonable degree of certainty that the sales data is  
9 materially inaccurate, the parties shall meet in a good faith  
10 attempt to resolve the matter within ten (10) days of  
11 Coleman's receipt of notice from DiPirro of his intent to  
12 challenge the accuracy of the sales data. If this good faith  
13 attempt fails to resolve DiPirro's concerns, DiPirro shall  
14 have the right to rescind the Agreement and re-institute an  
15 enforcement action against Coleman, provided that all sums  
16 paid by Coleman pursuant to paragraphs 2 and 3 are returned to  
17 Coleman within ten (10) days from the date on which DiPirro  
18 notifies Coleman of his intent to rescind this Agreement. In  
19 such case, all applicable statutes of limitation shall be  
20 deemed tolled for the period between the date DiPirro filed  
21 the instant action and the date DiPirro notifies Coleman that  
22 he is rescinding this Agreement pursuant to this Paragraph.

23                   **8. Product Characterization.** Coleman acknowledges  
24 that each of the Products listed in Exhibit A contains toluene  
25 and Dipirro alleges that the customary use or application of  
26 the Products is likely to expose users to toluene, a substance  
27 known to the State of California to cause birth defects (or

1 other reproductive harm). In the event that Coleman seeks to  
2 eliminate its warning obligation by obtaining analytical, risk  
3 assessment or other data ("Exposure Data") that shows an  
4 exposure to any or all Products will have "no observable  
5 effect," as such standard is applicable and as defined under  
6 Health & Safety Code §25249.10(c), or that the warning  
7 requirement under Health & Safety Code § 25249.6 is no longer  
8 applicable, then Coleman shall provide DiPirro with ninety  
9 (90) days prior written notice of its intent to limit or  
10 eliminate the warning provisions under this Agreement and  
11 shall provide DiPirro with all such supporting Exposure Data  
12 or other basis. Within ninety (90) days of receipt from  
13 Coleman of such information, DiPirro shall provide Coleman  
14 with written notice of his intent to challenge the  
15 determination by Coleman (in the event that he chooses to make  
16 such a challenge). If DiPirro fails to provide Coleman with  
17 such written notice of his intent to challenge the Exposure  
18 Data within ninety (90) days of receipt of Coleman's notice  
19 and substantiation, DiPirro shall waive all rights to  
20 challenge the determination, and Coleman shall be entitled to  
21 limit or eliminate the warning provisions required under this  
22 Agreement with respect to those Product(s) to which the such  
23 determination applies. If DiPirro timely notifies Coleman of  
24 his intent to challenge the determination, then (a) Coleman  
25 may stop its efforts to eliminate the warnings upon notice to  
26 DiPirro with no further liability or obligations or (b)  
27 Dipirro and Coleman shall negotiate in good faith for a period

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CONSENT JUDGMENT

1 not to exceed thirty (30) days following receipt of Coleman's  
2 notice to attempt to reach a settlement of this issue. If a  
3 settlement is not reached, DiPirro and Coleman agree to submit  
4 such challenge to the superior court for determination,  
5 pursuant to the court's continuing jurisdiction of this matter  
6 under C.C.P. §664.6 and this Agreement. The prevailing party  
7 shall be entitled to reasonable attorneys' fees and costs  
8 associated with bringing a motion brought under this paragraph  
9 to the court for determination.

10 **9. Severability.** In the event that any of the  
11 provisions of this Agreement are held by a court to be  
12 unenforceable, the validity of the enforceable provisions  
13 shall not be adversely affected.

14 **10. Attorney's Fees.** In the event that a dispute  
15 arises with respect to any provision(s) of this Agreement  
16 (including, but not limited to, disputes arising from the late  
17 payments provisions in paragraphs 2 and 3), the prevailing  
18 party shall be entitled to recover costs and reasonable  
19 attorneys' fees.

20 **11. Governing Law.** The terms of this Agreement  
21 shall be governed by the laws of the State of California.

22 **12. Notices.** All correspondence to Michael DiPirro  
23 shall be mailed to:

24 Jennifer Henry or David Bush  
25 Bush & Henry  
26 4400 Keller Ave., Suite 200  
Oakland, CA 94605  
(510) 577-0747

1 All correspondence to Coleman shall be mailed  
2 to:

3 Robin Stafford, Esq.  
4 Morrison & Foerster, LLP  
5 425 Market Street  
6 San Francisco, CA 94105-2482  
7 (415) 268-7000

8 **13. Compliance With Reporting Requirements (Health**  
9 **& Safety Code §25249.7(f)).** The parties agree to comply with  
10 the reporting form requirements referenced in Health & Safety  
11 Code §25249.7(f). Pursuant to the new regulations promulgated  
12 under Health & Safety Code §25249.7(f), DiPirro shall present  
13 this Consent Judgment to the California Attorney General's  
14 office upon receiving all necessary signatures. It will then  
15 be presented to the Alameda County Superior Court thirty (30)  
16 days later, provided that the Attorney General has not served  
17 any objections to this Consent Judgment prior to the  
18 expiration of the thirty day period.

19 **14. Counterparts and Facsimile.** This Agreement may  
20 be executed in counterparts and facsimile, each of which shall  
21 be deemed an original, and all of which, when taken together,  
22 shall constitute one and the same document.

23 **15. Authorization.** The undersigned are authorized  
24 to execute this Agreement on behalf of their respective  
25 parties and have read, understood and agree to all of the  
26 terms and conditions of this Agreement.  
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AGREED TO:

AGREED TO:

DATE: 1/14/01

DATE: \_\_\_\_\_

  
\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

\_\_\_\_\_  
Coleman Company  
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

\_\_\_\_\_  
Robin Stafford  
Attorneys for Defendant  
COLEMAN COMPANY

CONSENT JUDGMENT

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DATE: 12/19/01

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

*Kenneth A. Bell*  
\_\_\_\_\_  
Coleman Company  
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: \_\_\_\_\_

DATE: 12/20/01

\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

*Robin Stafford*  
\_\_\_\_\_  
Robin Stafford  
Attorneys for Defendant  
COLEMAN COMPANY

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\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

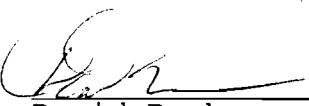
\_\_\_\_\_  
Coleman Company  
DEFENDANT

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

DATE: 12/21/01 \_\_\_\_\_

DATE: \_\_\_\_\_

  
\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

\_\_\_\_\_  
Robin Stafford  
Attorneys for Defendant  
COLEMAN COMPANY

CONSENT JUDGMENT



**EXHIBIT A**

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Canvas Tent Repair  
Seam Seal  
Air Seal Vinyl Repair  
Inflatable Rubber Repair

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