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6 Attorneys for Plaintiff
PETER ENGLANDER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

PETER ENGLANDER,
Plaintiff,
v.
THE COLEMAN COMPANY, INC.,
Defendant.

Case No. 112CV232185

**[PROPOSED] CONSENT
JUDGMENT**

1 **I. INTRODUCTION**

2 **A. Peter Englander and The Coleman Company, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and defendant The Coleman Company, Inc. (“Coleman”), with Englander and
5 Coleman collectively referred to as “parties.” Englander is an individual residing in the State of
6 California who seeks to promote awareness of exposure to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer and commercial
8 products. Coleman employs ten or more persons and is a person in the course of doing business
9 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
10 & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

11 **B. General Allegations**

12 Englander has alleged that Coleman has manufactured, imported, distributed
13 and/or sold air mattresses which contain di(2-ethylhexyl)phthalate (“DEHP”) without the
14 requisite Proposition 65 warnings. DEHP and other phthalates such as butyl benzyl phthalate
15 (“BBP”) and di-n-butyl phthalate (“DBP”) are listed under Proposition 65 as chemicals known to
16 cause birth defects and other reproductive harm. (Collectively, DEHP, BBP and DBP are referred
17 to herein as the “Listed Chemicals.”)

18 **C. Covered Products**

19 The products that are addressed by this Consent Judgment are air mattresses
20 containing DEHP, including, but not limited to, *The Original Aerobed Premium Air-Filled*
21 *Mattress Sleep Away #969IT (#7 60433 07711 5)* manufactured, imported, distributed, sold and/or
22 offered for sale by Coleman, directly or through others, to consumers in California, collectively
23 referred to hereinafter as the “Covered Products.”

24 **D. Notice of Violation and Complaint**

25 On or about December 13, 2011, Englander served Coleman; its corporate parent,
26 Jarden Corporation (“Jarden”); and various public enforcement agencies with a document entitled
27 “60-Day Notice of Violation,” along with the requisite Certificate of Merit, (the “Notice”) that
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1 provided the recipients with notice of alleged violations of Proposition 65 for failing to warn
2 consumers that the Covered Products sold by Coleman in California exposed users to DEHP. No
3 public enforcer has diligently prosecuted the allegations set forth in the Notice. On September
4 12, 2012, Englander filed a complaint based on the Notice in the Superior Court for Santa Clara
5 County California, *Peter Englander v. The Coleman Company, Inc. et al.*, Case No.
6 112CV232185.

7 **E. No Admission**

8 Coleman denies the material, factual, and legal allegations contained in
9 Englander's Notice and Complaint and maintains that all Covered Products it has sold and
10 distributed in California have been and are in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission by Coleman of any fact, finding, issue of law, or
12 violation of law; nor shall compliance with this Settlement Agreement constitute or be construed
13 as an admission by Coleman of any fact, finding, conclusion, issue of law, or violation of law,
14 such being specifically denied by Coleman. However, this section shall not diminish or otherwise
15 affect Coleman's obligations, responsibilities, and duties under this Consent Judgment.

16 **F. Execution and Effective Dates**

17 For purposes of this Consent Judgment, the term "Execution Date" shall refer to
18 the date on which this Consent Judgment has been fully executed by the Parties and their counsel.
19 The term "Effective Date" shall mean the date on which the Court approves this Consent
20 Judgment, including any unopposed Tentative Ruling.

21 **II. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION.**

22 As of the Execution Date, Coleman shall only distribute for sale in California or sell in
23 California Covered Products that: (1) are "Phthalate Free"; or (2) carry a clear and reasonable
24 Proposition 65 warning as specified in Section II.B below.¹

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27 ¹ Covered Products that were imported or supplied to third parties by Coleman or Jarden's other subsidiaries prior to
28 the Execution Date shall be deemed exempted from the requirements of Sections II.A and II.B above and permitted
to be sold through as previously manufactured, packaged or labeled.

1 **A. Reformulation**

2 For purposes of this Settlement Agreement, "Phthalate Free" shall mean Covered
3 Products containing less than or equal to 1,000 parts per million ("ppm") each of DEHP, DBP
4 and BBP, when analyzed pursuant to U.S. Environmental Protection Agency testing
5 methodologies 3580A and 8270C or other methods approved by government agencies to measure
6 the phthalate content of plastics or poly vinyl chloride.

7 **B. Warnings**

8 To the extent it does not address its obligations through reformulation meeting the
9 criteria set forth in Section II.A of this Consent Judgment, Coleman shall address its Proposition
10 65 obligations for Listed Chemicals in Covered Products by affixing a warning to the packaging
11 of, or, if no packaging exists, directly on, each non-reformulated Covered Product sold in
12 California that states:

13 **WARNING:** This product contains one or more phthalate
14 chemicals known to the State of California
15 to cause birth defects and other reproductive
 harm.

16 Any warning issued pursuant to this Section II.B shall be prominently placed with
17 such conspicuousness as compared with other words, statements, designs, or devices as to render
18 it likely to be read and understood by an ordinary individual under customary conditions before
19 purchase.

20 **III. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

21 In settlement of all the claims referred to in this Consent Judgment, Coleman shall pay
22 \$43,000 in civil penalties as follows:

23 **A. Initial Civil Penalty**

24 In settlement of all the claims referred to in the Notice and in consideration of all
25 the other terms in this Consent Judgment, Coleman shall pay an initial civil penalty in the amount
26 of \$13,000, to be apportioned in accordance with California Health & Safety Code § 25192, with
27 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
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1 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as
2 provided by California Health & Safety Code § 25249.12(d).

3 Coleman shall issue two separate checks for the initial penalty payment: (a) one check
4 made payable to “The Chanler Group in Trust for OEHHA” in an amount representing 75% of
5 the total penalty; and (b) one check to “The Chanler Group in Trust for Peter Englander” in an
6 amount representing 25% of the total penalty. Two separate 1099s shall be issued for the above
7 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)
8 Peter Englander, whose information shall be provided by email or other means within five (5)
9 calendar days of Coleman’s execution and delivery of this Consent Judgment document to
10 Englander’s counsel.

11 Payment shall be delivered to Englander’s counsel on or before five business days
12 following the Effective Date, at the following address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

18 **B. Additional Civil Penalty**

19 Coleman shall pay an additional civil penalty of \$30,000 on or before January 31,
20 2013. As an incentive for undertaking reformulation, however, this additional civil penalty shall
21 be waived if Coleman certifies in writing that it has reformulated or ceased manufacturing or
22 causing to be manufactured, at a minimum, 50% of its air mattress products (based on item or
23 stock keeping unit numbers) in existence on the date of Englander’s Notice, including the
24 Coleman Single High Quickbed Air Bed No. 2000002845, one of its then top-selling lines. Such
25 certification must be received by The Chanler Group on or before January 15, 2013. The
26 additional civil penalty shall, if not waived pursuant to the above, be apportioned in accordance
27 with California Health & Safety Code §25192, with 75% of these funds remitted to OEHHA and
28 the remaining 25% of the penalty remitted to Peter Englander, as provided by California Health &
Safety Code § 25249.12(d). Coleman shall issue two separate checks for the final civil penalty

1 payment: (a) one check made payable to "The Chanler Group in Trust for OEHHA" in an amount
2 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Peter
3 Englander" in an amount representing 25% of the total penalty. Two separate 1099s shall be
4 issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-
5 0284486); and (b) Peter Englander, whose information shall be provided by email or other means
6 at least thirty (30) calendar days before the payment is due. Payment shall be delivered to
7 Englander's counsel at the following address:

8 The Chanler Group
9 Attn: Proposition 65 Controller
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710

11 **IV. REIMBURSEMENT OF FEES AND COSTS**

12 The Parties reached an accord on the compensation due to Englander and his counsel
13 under the private attorney general doctrine and principles of contract law after Englander and his
14 counsel offered to adjudicate fees as an ancillary matter. Under these legal principles, Coleman
15 shall reimburse Englander's counsel for fees and costs incurred as a result of investigating,
16 bringing this matter to its attention, and negotiating a settlement and obtaining approval and entry
17 of this consent judgment. Coleman shall pay Englander and his counsel \$37,000 for all attorneys'
18 fees, expert and investigation fees, and related costs, including the fees and costs associated with
19 negotiating, drafting, and implementing the provisions of this Consent Judgment. The payment
20 shall be issued in a separate check made payable to "The Chanler Group" and shall be delivered
21 on or before five business days following the Effective Date, to the following address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

25 Coleman shall issue a separate Form 1099 for attorney's fees and costs paid under this
26 paragraph to The Chanler Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California
27 94710 (EIN: 94-3171522).

1 **V. RELEASE OF ALL CLAIMS**

2 **A. Englander's Public Interest and Private Releases**

3 In consideration of the promises and agreements herein contained, Englander on
4 behalf of himself and his past and current agents, representatives, attorneys, successors, and/or
5 assignees, and in the public interest, hereby releases Coleman and Jarden; their subsidiaries,
6 divisions and brands (including, but not limited to, the Aerobed brand and its corporate
7 predecessor); all of their directors, officers, employees, agents and shareholders ("Releasees");
8 and each of any of their downstream distributors, dealers, customers, purchasers, and retailers
9 ("Downstream Defendant Releasees") and from all claims for violations of Proposition 65 arising
10 up through the Effective Date based on exposure to DEHP from Covered Products as set forth in
11 the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
12 Proposition 65 with respect to exposures to DEHP in Covered Products.

13 Englander, on behalf of himself and his past and current agents, representatives,
14 attorneys, successors, and/or assignees and *not* in his representative capacity, also agrees to
15 release Coleman, Jarden, their Releasees, and the Downstream Defendant Releasees as to
16 Proposition 65 claims relating to BBP or DBP in the Covered Products. The Parties understand
17 and agree that these further releases are not being given on behalf of the public interest; however,
18 compliance with the terms of Section II of this Consent Judgment constitutes compliance with the
19 Court's continuing injunction with respect to the application of Proposition 65 to Listed
20 Chemicals in Covered Products. Nothing in this subsection affects Englander's rights to
21 commence or prosecute an action under Proposition 65 against a Downstream Defendant
22 Releasee that does not involve a Coleman- or Jarden-associated Covered Product.

23 **B. Coleman and Jarden's Release of Englander**

24 Coleman and Jarden waive any and all claims against Englander, his attorneys, and
25 other representatives for any and all actions taken by Englander and his attorneys and other
26 representatives, whether in the course of investigating claims or otherwise seeking enforcement of
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1 Proposition 65 against it in this matter, and/or with respect to the Listed Chemicals in the Covered
2 Products.

3 **VI. SEVERABILITY**

4 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this
5 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
6 provisions remaining shall not be adversely affected.

7 **VII. GOVERNING LAW**

8 The terms of this Settlement Agreement shall be governed by the laws of the State of
9 California and apply within the State of California.

10 **VIII. NOTICES**

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

15 To Coleman:

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

20 With a copy to:

21 Robert L. Falk, Esq.
22 Morrison & Foerster LLP
23 425 Market Street
24 San Francisco, California 94105

25 To Peter Englander:

26 Proposition 65 Coordinator
27 The Chanler Group
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

1 **IX. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or .pdf
3 signature, each of which shall be deemed an original, and all of which, when taken together, shall
4 constitute one and the same document. A facsimile or .pdf signature shall be as valid as the
5 original.

6 **X. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

7 Englander and his attorneys agree to comply with the requirements referenced in
8 California Health & Safety Code § 25249.7(f).

9 **XI. MODIFICATION AND ATTORNEY'S FEES**

10 **A. Modification**

11 This Consent Judgment may be modified only by stipulation of the parties and an
12 order of the Court or upon a motion by any party that is granted by the Court.

13 **B. Attorney's Fees**

14 **1.** Should Englander prevail on any motion, application for an order to show
15 cause, breach of contract claim, or other proceeding, motion or claim to enforce a violation of this
16 Consent Judgment, Englander shall be entitled to seek his reasonable attorney's fees and costs
17 incurred as a result of such motion or application, consistent with CCP § 1021.5. Should
18 Coleman prevail on any motion or application for an order to show cause or other proceeding,
19 Coleman may be awarded its reasonable attorney's fees and costs as a result of such motion or
20 application upon a finding by the Court that Englander's prosecution of the motion or application
21 lacked substantial justification. For purposes of this Consent Judgment, the term substantial
22 justification shall carry the same meaning as used in Civil Discovery Act of 1986, Code of Civil
23 Procedure §§ 2016, *et seq.*

24 **2.** Except as specifically provided in Section IV and XI.B.1. above, each party
25 shall bear its own costs and attorney's fees in connection with this action. Nothing in this Section
26 XI shall preclude a party from seeking an award of sanctions pursuant to law.

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1 **XII. ADDITIONAL POST-EXECUTION ACTIVITIES**

2 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
3 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
4 obtaining such approval, Englander's counsel shall prepare a motion for this Consent Judgment's
5 approval by the Court, and Englander and Coleman, and their respective counsel, agree to
6 mutually employ their best efforts to support the entry of this agreement as a Consent Judgment
7 and obtain approval of the Consent Judgment by the Court in a timely manner.

8 **XIII. ENTIRE AGREEMENT**

9 This Consent Judgment contains the sole and entire agreement and understanding of the
10 parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, and understandings related hereto. No representations, oral or
12 otherwise, express or implied, other than those contained herein have been made by any Party
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
14 deemed to exist or to bind any of the parties.

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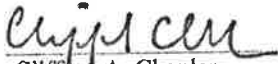
1 **AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5 **APPROVED AS TO FORM:**

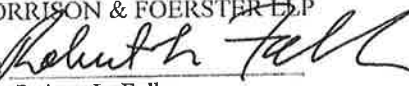
6 Dated: October 22, 2012

THE CHANLER GROUP

7 By: 
8 Clifford A. Chanler
9 Attorneys for Plaintiff,
PETER ENGLANDER

10 Dated: 10/18/12

MORRISON & FOERSTER LLP

11 By: 
12 Robert L. Falk
13 Attorneys for Defendant,
14 THE COLEMAN COMPANY, INC.

15 **IT IS HEREBY SO STIPULATED:**


16 **AGREED TO:**

17 Dated: October 15, 2012

18 By: 
19 PETER ENGLANDER

20 **AGREED TO:**

21 Dated: 10/19/2012

22 THE COLEMAN COMPANY, INC.
23 By: 
24 Name: Marc P. Clements
25 Title: VP - Litigation

26 **IT IS HEREBY ORDERED:**

27 Dated: _____

28 _____
Judge, Superior Court