SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
CIVIL BUSINESS OFFICE 4
CENTRAL DIVISION

2012 APR 23 PM 2:20

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

THE COLEMAN COMPANY, INC., K-MART CORPORATION AND DOES 1 THROUGH 25 INCLUSIVE

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MAUREEN PARKER

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (*www.sucorte.ca.gov*), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (*www.lawhelpcalifornia.org*), en el Centro de Ayuda de las Cortes de California, (*www.sucorte.ca.gov*) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

CASE NUMBER:
(Número del Caso):
37-2012-00096019-CU-NP-CTL

The name and address of the court is:
(El nombre y dirección de la corte es): Hall of Justice
330 West Broadway, San Diego, CA 92101-3827

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Stephen Ure, SBC#188244, Law Offices of Stephen Ure, PC., 1518 Sixth Avenue, San Diego, CA 92101, Tel (619) 235-5400

DATE: *(Fecha)* APR 23 2012 Clerk, by *(Secretario)* A. Santiago , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov
www.accesslaw.com

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Stephen Ure (CSB#188244)
Law Offices of Stephen Ure, PC.
1518 Sixth Avenue, San Diego, CA 92101
TELEPHONE NO.: (619) 235-5400 FAX NO.: (619) 235-5404
ATTORNEY FOR (Name): Plaintiff, Maureen Parker

FOR COURT USE ONLY

FILED
CIVIL BUSINESS OFFICE 4
CENTRAL DIVISION

2012 APR 23 PM 2:50

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: Same
CITY AND ZIP CODE: San Diego, CA 92101-3827
BRANCH NAME: Hall of Justice

CASE NAME: MAUREEN PARKER v. THE COLEMAN COMPANY, INC., K-MART CORPORATION AND DOES 1- 25 INCLUSIVE

CIVIL CASE COVER SHEET

☑ **Unlimited** (Amount demanded exceeds $25,000) ☐ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **37-2012-00096019-CU-NP-CTL**

JUDGE:

DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- ☐ Auto (22)
- ☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- ☐ Asbestos (04)
- ☐ Product liability (24)
- ☐ Medical malpractice (45)
- ☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- ☐ Business tort/unfair business practice (07)
- ☐ Civil rights (08)
- ☐ Defamation (13)
- ☐ Fraud (16)
- ☐ Intellectual property (19)
- ☐ Professional negligence (25)
- ☑ Other non-PI/PD/WD tort (35)

Employment
- ☐ Wrongful termination (36)
- ☐ Other employment (15)

Contract
- ☐ Breach of contract/warranty (06)
- ☐ Rule 3.740 collections (09)
- ☐ Other collections (09)
- ☐ Insurance coverage (18)
- ☐ Other contract (37)

Real Property
- ☐ Eminent domain/Inverse condemnation (14)
- ☐ Wrongful eviction (33)
- ☐ Other real property (26)

Unlawful Detainer
- ☐ Commercial (31)
- ☐ Residential (32)
- ☐ Drugs (38)

Judicial Review
- ☐ Asset forfeiture (05)
- ☐ Petition re: arbitration award (11)
- ☐ Writ of mandate (02)
- ☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- ☐ Antitrust/Trade regulation (03)
- ☐ Construction defect (10)
- ☐ Mass tort (40)
- ☐ Securities litigation (28)
- ☐ Environmental/Toxic tort (30)
- ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
- ☐ RICO (27)
- ☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- ☐ Partnership and corporate governance (21)
- ☐ Other petition *(not specified above)* (43)

2. This case ☐ is ☑ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply):* a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☑ punitive
4. Number of causes of action *(specify):* One (1)
5. This case ☐ is ☑ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: 4/23/2012

Stephen Ure, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Stephen Ure, Esq., (CSB# 188244)
LAW OFFICES OF STEPHEN URE, PC
1518 Sixth Avenue
San Diego, CA 92101
Telephone: 619-235-5400
Facsimile: 619-235-5404

Attorneys for Plaintiff, Maureen Parker

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

UNLIMITED CIVIL JURISDICTION

MAUREEN PARKER,

Plaintiff,

and

THE COLEMAN COMPANY, INC.
K-MART CORPORATION

AND DOES 1 -25 INCLUSIVE

Defendant.

CASE NO.: 37-2012-00096019-CU-NP-CTL

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

(Cal. Health & Safety Code § 25249.6 et seq.)

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff Maureen Parker, in the public interest of the citizens of the State of California, to enforce the people's right to be informed of the presence of lead, a toxic chemical found in Coleman Brass Whistle (UPC # 076501904925) sold in California.

2. By this Complaint, plaintiff seeks to remedy defendants` continuing failures to warn California citizens about their exposure to lead present in or on certain brass whistles that

defendants manufacture, distribute and/or offer for sale to consumers throughout the State of California.

3. High levels of lead are commonly found in Coleman Brass Whistle (UPC #076501904925) that defendants manufacture, distribute and/or offer for sale to consumers throughout the State of California.

4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 et seq. (Proposition 65), "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual…" (*Cal. Health & Safety Code § 25249.6.*)

5. California identified and listed Lead as a chemical known to cause birth defects and other reproductive harm. Lead became subject to the warning requirements of Proposition 65 for developmental toxicity beginning on February 27, 1987 and for cancer toxicity on October 1, 1992. *(27 CCR § 27002; Cal. Health & Safety Code § 25249.6.)*

6. Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

7. Defendant manufactures, distributes and/or sells whistles containing excessive levels of the LISTED CHEMICAL including, but not limited to Coleman Brass Whistle (UPC #076501904925). All such whistles containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

8. Defendants` failures to warn consumers and/or other individuals in the State of California about their exposure to the LISTED CHEMICAL in conjunction with defendant's sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinment of such conduct as well as civil penalties for each such violation.

9. For defendants` violations of Proposition 65, plaintiff seeks preliminary injunctive and permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).)*

10. Plaintiff also seeks civil penalties against defendants for their violations of Proposition 65, as provides for by California Health & Safety Code § 25249.7(b).

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PARTIES

11. Plaintiff Maureen Parker is a citizen of the City of Oceanside, County of San Diego, in the State of California, who is dedicated to protecting the health of California citizens through the elimination o reduction of toxic exposures from consumer products, and brings this action in the public interest pursuant to California Health & Safety Code § 25249.7.

12. Defendant THE COLEMAN COMPANY, INC. ("COLEMAN" or "DEFENDANT") is a person doing business within the meaning of California Health & Safety Code § 25249.11.

13. Defendant COLEMAN manufactures, distributes, and/or offers the PRODUCTS for sales or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

14. Defendant K-MART CORPORATION ("K-MART" or "DEFENDANT") is a person doing business within the meaning of California Health & Safety Code § 25249.11.

15. Defendant K-MART manufactures, distributes, and/or offers the PRODUCTS for sales or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

16. shall, where appropriate, be referred to hereinafter as "DEFENDANTS."

VENUE AND JURISDICTION

17. Venue is proper in the San Diego County Superior Court, pursuant to Code of Civil Procedure § § 394, 495, 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continues to occur, in the County of San Diego and/or because DEFENDANTS conducted, and continue to conduct, business in this County with respect to the PRODUCTS.

18. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction in

all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

19. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either are citizens of the State of California, have sufficient minimum contacts in the State of California, or otherwise purposefully avail themselves of the California market. DEFENDANTS` purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 – Against Defendant)

20. Plaintiff realleges and incorporates by reference, as if full reference, as if full set forth herein, Paragraphs 1 through 24, inclusive.

21. The citizens of the State of California have expressly stated in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq. (Proposotion 65) that they must be informed "about exposures to chemicals that cause cancer, birth defects and order reproductive harm." *(Cal. Health & Safety Code § 25249.6.)*

22. Proposition 65 states, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or productive toxicity without first giving clear and reasonable warning to such individual (*Id.*)"

23. On August 22, 2011 a sixty-day notice violation, together with the requisite certificate of merit, was provided to COLEMAN, and various public enforcement agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable users of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

24. DEFENDANTS have engaged in the manufacture, distribution and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in

violation of California Health & Safety Code § 25249.6 has continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such violations will continue to occur into the future.

25. After receipt of the claims asserted in the sixty-day notices of violation, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.

26. The PRODUCTS manufactured, distributed, and/or offered for sale or use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state limits.

27. DEFENDANTS knew or should have known that the PRODUCTS manufactured, distributed, and/or for sale or use by DEFENDANT in California contained the LISTED CHEMICAL.

28. The LISTED CHEMICAL was present in or on the PRODUCTS in such away as to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

29. The normal and reasonably foreseeable use of he PRODUCTS has caused and continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure s defined by 27 CCR§ 25602(b).

30. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion.

31. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to individuals in the State of California.

32. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers and/or other individuals in the State of California who were or who could become

exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

33. Contrary to the express policy and statutory prohibition of Proposition 65, enacted directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDENT without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

34. As a consequence of the above-described acts, each DEFENDANT is liable for a maximum civil penal of $2,500 per day for each violation pursuant to California Health& Safety Code § 25249.7(b).

35. As a consequence of the above-described acts, California Health & Safety Code § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

36. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth hereinafter.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS, in the amount of $2,500 per day for each violation alleged herein;, pursuant to

2. That the Court, pursuant to California Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as detailed by 27 CCR § 25601, as to the harms associated with exposures to the LISTED CHEMICAL;

3. That the Court grant plaintiff his reasonable attorneys' fees and cost of suit; and

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4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,

Dated: April 23, 2012

Law Offices of Stephen Ure, PC.

By: _____
Stephen Ure, Esq.
Attorney for Plaintiff