

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, Evelyn Wimberley

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: EVELYN WIMBERLEY v. THE COLEMAN COMPANY, INC.,
 WAL-MART STORES, INC. 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: **37-2013-00047963-CU-NP-CTL**

JUDGE: _____
 DEPT: _____

FOR COURT USE ONLY
 FILED
 CIVIL BUSINESS OFFICE 4
 CENTRAL DIVISION
 2013 MAY -9 PM 1:40
 CLERK-SUPERIOR COURT
 SAN DIEGO COUNTY, CA

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:

<p>Auto Tort</p> <p><input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)</p>	<p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)</p>
--	---	---

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 d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence 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: 5-9-13
 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.

FILED
CIVIL BUSINESS OFFICE 4
CENTRAL DIVISION
2013 MAY -9 PM 1:40
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 Stephen Ure, Esq., (CSB# 188244)
2 **LAW OFFICES OF STEPHEN URE, PC**
3 1518 Sixth Avenue
4 San Diego, CA 92101
5 Telephone: 619-235-5400
6 Facsimile: 619-235-5404

7 *Attorneys for Plaintiff, Evelyn Wimberley*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10 **UNLIMITED CIVIL JURISDICTION**

13 **EVELYN WIMBERLEY,**)
14)
15 **Plaintiff,**)
16 **and**)
17 **THE COLEMAN COMPANY, INC.**)
18 **WAL-MART STORES, INC.**)
19 **AND DOES 1 -25 INCLUSIVE**)
20 **Defendant.**)
21 _____)

CASE NO.: 37-2013-00047963-CU-NP-CTL
COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF
(Cal. Health & Safety Code § 25249.6 et seq.)

22 **NATURE OF THE ACTION**

23 1. This Complaint is a representative action brought by plaintiff Evelyn Wimberley,
24 in the public interest of the citizens of the State of California, to enforce the people's right to be
25 informed of the presence of lead, a toxic chemical found in Coleman Lantern Spark Igniter
26 (UPC 076501900637) sold in California. By this Complaint, plaintiff seeks to remedy
27 defendants' continuing failures to warn California citizens about their exposure to lead present
28

1 in or on certain lantern spark igniter that defendants manufacture, distribute and/or offer for sale
2 to consumers throughout the State of California.

3 2. High levels of lead are commonly found in Coleman Lantern Spark Igniter (UPC
4 #076501900637) that defendants manufacture, distribute and/or offer for sale to consumers
5 throughout the State of California.

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

11 4. California identified and listed Lead as a chemical known to cause birth defects
12 and other reproductive harm. Lead became subject to the warning requirements of Proposition 65
13 for developmental toxicity beginning on February 27, 1987 and for cancer toxicity on October 1,
14 1992. (*27 CCR § 27002; Cal. Health & Safety Code § 25249.6.*)

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

16 6. Defendant manufactures, distributes and/or sells whistles containing excessive
17 levels of the LISTED CHEMICAL including, but not limited to Coleman Lantern Spark Igniter
18 (UPC #076501900637). All such lantern spark igniter containing the LISTED CHEMICAL shall
19 hereinafter be referred to as the "PRODUCTS."

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

24 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary
25 injunctive and permanent injunctive relief to compel defendants to provide purchasers or users of
26 the PRODUCTS with the required warning regarding the health hazards of the LISTED
27 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)
28

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

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

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 – Against Defendant)**

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

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

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

20 22. On February 8, 2013 a sixty-day notice violation, together with the requisite
21 certificate of merit, was provided to COLEMAN, and various public enforcement agencies
22 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in
23 the State of California were being exposed to the LISTED CHEMICAL resulting from the
24 reasonably foreseeable users of the PRODUCTS, without the individual purchasers and users
25 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

26 23. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
27 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
28 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in

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

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

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

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

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

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

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

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

26 31. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and/or other individuals in the State of California who were or who could become
28

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

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

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

11 34. As a consequence of the above-described acts, California Health & Safety Code §
12 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 35. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
15 hereinafter.

16 **PRAYER FOR RELIEF**

17 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

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

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

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


27 ///

28 ///

1 4. That the Court grant such other and further relief as may be just and proper.
2

3
4 Dated: May 9, 2013

Respectfully Submitted,
Law Offices of Stephen Ure, PC.

5
6 By: 
7 Stephen Ure, Esq.
8 Attorney for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28