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SOUTH COUNTY DIVISION  
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**  
10 **UNLIMITED CIVIL JURISDICTION**  
11

12  
13 **EVELYN WIMBERLEY,** )

14 **Plaintiff,** )

15 **VS.** )

16 **UST BRANDS** )  
17 **WALMART STORES, INC** )

18 **AND DOES 1-25 INCLUSIVE** )

19 )  
20 **DEFENDANTS.** )  
21 )

**CASE NO.: 37-2018-00006045-CU-NP-NC**

**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 dangers from exposures to Carbon Monoxide and Soot (hereafter "Listed  
26 Chemicals") toxic chemicals when using Wetfire Fire Starting Tinder sold by DEFENDANTS  
27 in California.  
28

**COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF**

1           2. By this Complaint, plaintiff seeks to remedy DEFENDANTS' continuing failures  
2 to warn California citizens about their exposure to the Listed Chemicals produced as a result of  
3 combustion during the normal and intended use of the Wetfire Fire Starting Tinder (UPC  
4 812713019480) (hereafter "PRODUCT(S)"), that the DEFENDANTS manufactured, distributed  
5 and sold, in the State of California and PRODUCTS that DEFENDANTS continue to  
6 manufacture, distribute and offer for sale in the State of California.

7           3. High levels of the Listed Chemicals are common combustion byproducts produced  
8 during the normal and intended use of the PRODUCT that DEFENDANTS manufacture,  
9 distribute and/or offer for sale to consumers throughout the State of California.

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

15           5. California identified and listed Carbon Monoxide as a chemical known to cause  
16 birth defects and other reproductive harm. Carbon Monoxide became subject to the warning  
17 requirements of Proposition 65 for developmental toxicity beginning on July 1, 1989 (*27 CCR §*  
18 *27002; Cal. Health & Safety Code § 25249.6.*)

19           6. California identified and listed Soot as a chemical known to cause birth defects and  
20 cancer. Soot became subject to the warning requirements of Proposition 65 for developmental  
21 toxicity beginning on February 27, 1987. (*27 CCR Sec. 27002; Cal. Health & Safety Code Sec.*  
22 *25249.6*)

23           7. DEFENDANTS' past and continuing failures to warn consumers and/or other  
24 individuals in the State of California about their exposure to the LISTED CHEMICALS in  
25 conjunction with defendant's sale of the PRODUCTS is a violation of Proposition 65 and  
26 subjects DEFENDANTS to enjoinder of such conduct as well as civil penalties for each such  
27 violation.



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 16. 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 17. Plaintiff realleges and incorporates by reference, as if full reference, as if fully set  
12 forth herein, Paragraphs 1 through 16, inclusive.

13 18. 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 19. 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...  
20 (*Id.*)”

21 20. On May 8, 2017 a sixty-day notice violation, together with the requisite certificate  
22 of merit, was provided to DEFENDANTS, and various public enforcement agencies stating that  
23 as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the State of  
24 California were being exposed to the LISTED CHEMICAL resulting from the reasonably  
25 foreseeable users of the PRODUCTS, without the individual purchasers and users first having  
26 been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

1 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
2 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
3 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
4 believes that such violations will continue to occur into the future.

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

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

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

14 25. The PRODUCTS, through normal use produces the LISTED CHEMICALS in  
15 such a way as to expose individuals to the LISTED CHEMICALS through inhalation, dermal  
16 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

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

20 27. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
21 the PRODUCTS would expose individuals to the LISTED CHEMICAL..

22 28. 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.

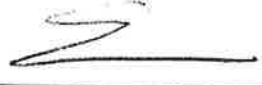
26 29. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
27 consumers and/or other individuals in the State of California who were or who could become  
28 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.



3. That the Court grant plaintiff his reasonable attorneys' fees and cost of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Dated: February 05, 2018

Respectfully Submitted,  
Law Offices of Stephen Ure, PC.

By:   
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Stephen Ure, Esq.  
Attorney for Plaintiff  
EVELYN WIMBERLEY

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