

ENDORSED FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

FEB 29 2006  
FOR COURT USE ONLY

GORDON PARK-LI, CLERK

BY: Deputy Clerk

NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)  
Eric S. Somers, State Bar No. 139050  
Lexington Law Group, LLP  
1627 Irving Street, San Francisco, CA 94122  
(415) 759-4111

ATTORNEY(S) FOR:

AMENDMENT TO  
COMPLAINT

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN FRANCISCO

CASE NUMBER

CGC-05-446289

Center for Environmental Health

Plaintiff(s)

vs. Michaels Stores, Inc.

Defendant(s)

**FICTITIOUS NAME [SEC. 474 C.C.P.]**

Upon filing the complaint herein, plaintiff(s) being ignorant of the true name of a defendant, and having designated said defendant in the complaint by the fictitious name of:

Doe 3

and having discovered the true name of the said defendant to be:

Novtex Corporation

hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.



Attorney(s) for plaintiff(s)

**INCORRECT NAME [SEC. 473 (a)(1) C.C.P.]**

Plaintiff(s) having designated a defendant in the complaint by the incorrect name of

and having discovered the true name of the said defendant to be

hereby amend(s) the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

Attorney(s) for Plaintiff(s)

**ORDER**

Proper cause appearing, the above amendment to the complaint is allowed.

Dated: \_\_\_\_\_

Judge

NOV 02 2005

GORDON PARK-LI, Clerk  
BY: JUN P. PANELO  
Deputy Clerk

1 LEXINGTON LAW GROUP, LLP  
Eric S. Somers, State Bar No. 139050  
2 Mark N. Todzo, State Bar No. 168389  
Howard J. Hirsch, State Bar No. 213209  
3 1627 Irving Street  
San Francisco, CA 94122  
4 Telephone: (415) 759-4111  
Facsimile: (415) 759-4112

CASE MANAGEMENT CONFERENCE SET

APR 07 2006 - 9 00 AM

5 Attorneys for Plaintiff  
6 CENTER FOR ENVIRONMENTAL HEALTH

DEPARTMENT 212

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

11 CGC 05446289

12 CENTER FOR ENVIRONMENTAL HEALTH, )  
13 a non-profit corporation, )

Case No. \_\_\_\_\_

14 Plaintiff, )

**COMPLAINT FOR INJUNCTIVE  
RELIEF, CIVIL PENALTIES AND  
RESTITUTION**

15 v. )

16 MICHAELS STORES, INC., HIRSCHBERG )  
17 SCHUTZ & CO., INC.; and Defendant DOES 1 )  
18 through 200, inclusive, )

Health & Safety Code §25249.6 *et seq.*;

(Other)

19 Defendants. )  
20  
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1 Plaintiff Center for Environmental Health, in the public interest, based on  
2 information and belief and investigation of counsel, except for information based on personal  
3 knowledge, hereby makes the following allegations:

#### 4 INTRODUCTION

5 1. This complaint seeks to remedy defendants' continuing failure to warn  
6 individuals in California that they are being exposed to lead and lead compounds (collectively,  
7 "Lead"), chemicals known to the State of California to cause cancer, birth defects and other  
8 reproductive harm. Such exposures have occurred, and continue to occur, through the  
9 manufacture, distribution, sale and use of defendants' imitation pearl products that contain Lead.  
10 The imitation pearls are found in such products as jewelry, beads and buttons for clothing (the  
11 "Products"). Lead is present in the materials and coatings used to make the Products. The route  
12 of exposure for the violations is direct ingestion when consumers place the Products in their  
13 mouths, ingestion via hand to mouth contact after consumers wear, touch or handle the Products,  
14 ingestion via hand to mouth contact when consumers eat or drink after coming into contact with  
15 the Products, and dermal absorption directly through the skin when consumers wear, touch or  
16 handle the Products. Many of the Products are designed for and marketed to young children and  
17 teens, who are particularly likely to place the Products in their mouths and who are also  
18 particularly susceptible to Lead poisoning. These exposures occur in homes, workplaces and  
19 everywhere else throughout California where people wear, touch or handle the Products. Clear  
20 and reasonable warnings are not provided to users of the Products regarding the carcinogenic or  
21 reproductive hazards of Lead. Consequently, defendants have violated and continue to violate  
22 the warning provision of Proposition 65. Health & Safety Code §25249.6.

#### 23 PARTIES

24 2. Plaintiff Center For Environmental Health ("CEH") is a non-profit  
25 corporation dedicated to protecting the public from environmental health hazards and toxic  
26 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of  
27 California. CEH is a "person" within the meaning of Health & Safety Code §25249.11(a) and  
28 brings this enforcement action in the public interest pursuant to Health & Safety Code

1 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has  
2 prosecuted a large number of Proposition 65 cases in the public interest. These cases have  
3 resulted in significant public benefit, including reformulation of toxic products to make them  
4 safer and the provision of clear and reasonable warnings on hundreds of products sold throughout  
5 California. CEH is thus a competent plaintiff and adequate representative of the general public.

6 3. Defendant Michaels Stores, Inc. ("Michaels") is a person in the course of  
7 doing business within the meaning of Health & Safety Code §25249.11. Michaels manufactures,  
8 distributes and/or sells the Products for sale and use in California.

9 4. Defendant Hirschberg Schutz & Co., Inc. ("Hirschberg") is a person in the  
10 course of doing business within the meaning of Health & Safety Code §25249.11. Hirschberg  
11 manufactures, distributes and/or sells the Products for sale and use in California.

12 5. The true names of DOES 1 through 200 are unknown to plaintiff at this  
13 time. When their identities are ascertained, the complaint shall be amended to reflect their true  
14 names.

15 6. The defendants identified in Paragraphs 3 and 4 and DOES 1 through 200  
16 are collectively referred to herein as "Defendants."

### 17 JURISDICTION AND VENUE

18 7. The Court has jurisdiction over this action pursuant to Health & Safety  
19 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The  
20 California Superior Court has jurisdiction over this action pursuant to California Constitution  
21 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except  
22 those given by statute to other trial courts." The statutes under which this action is brought do  
23 not grant jurisdiction to any other trial court.

24 8. This Court has jurisdiction over the Defendants because each is a business  
25 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
26 intentionally avails itself of the California market through the sale, marketing or use of the  
27 Products in California and/or by having such other contacts with California so as to render the  
28 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair

1 play and substantial justice.

2 9. Venue is proper in the San Francisco Superior Court because one or more of  
3 the violations arise in the County of San Francisco.

4 **BACKGROUND FACTS**

5 10. The People of the State of California have declared by initiative under  
6 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth  
7 defects, or other reproductive harm.” Proposition 65, §1(b).

8 11. To effectuate this goal, Proposition 65 requires that individuals be  
9 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the  
10 State of California as known to cause cancer, birth defects and other reproductive harm unless  
11 the business responsible for the exposure can prove that it fits within a statutory exemption.  
12 Health & Safety Code §25249.6 states, in pertinent part:

13 No person in the course of doing business shall knowingly and  
14 intentionally expose any individual to a chemical known to the  
15 state to cause cancer or reproductive toxicity without first giving  
clear and reasonable warning to such individual....

16 12. On February 27, 1987, the State of California officially listed Lead as a  
17 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
18 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to  
19 the developing fetus, “female reproductive toxicity,” which means harm to the female  
20 reproductive system, and “male reproductive toxicity,” which means harm to the male  
21 reproductive system. 22 California Code of Regulations (“CCR”) §12000(c). On February 27,  
22 1988, one year after it was listed as a chemical known to cause reproductive toxicity, Lead  
23 became subject to the clear and reasonable warning requirement regarding reproductive toxicants  
24 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

25 13. On October 1, 1992, the State of California officially listed lead and lead  
26 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
27 listed as a chemicals known to cause cancer, lead and lead compounds became subject to the  
28 clear and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR

1 §12000(c); Health & Safety Code §25249.10(b).

2 14. Under Proposition 65, an exposure is “knowing” where the party  
3 responsible for such exposure has:

4 knowledge of the fact that a[n] . . . exposure to a chemical listed  
5 pursuant to Health and Safety Code §25249.8(a) is occurring. No  
6 knowledge that the . . . exposure is unlawful is required.

6 22 CCR §12201(d).

7 15. Defendants know that individuals, including children, wear, touch and  
8 handle the Products, thus exposing them to Lead without prior clear and reasonable warning  
9 regarding the carcinogenic or reproductive hazards of Lead.

10 16. Defendants intend that individuals, including children, through the  
11 reasonably foreseeable use of the Products, wear, touch and handle the Products, thus exposing  
12 them to Lead without prior clear and reasonable warning regarding the carcinogenic or  
13 reproductive hazards of Lead.

14 17. The Products contain sufficient quantities of Lead such that consumers  
15 who wear, touch or handle the Products are exposed to Lead through the reasonably foreseeable  
16 use of the Products. These exposures occur when people who wear, touch or handle the Products  
17 ingest the Lead by placing the Products directly in their mouths, ingest the Lead by hand to  
18 mouth contact, ingest the Lead by eating or drinking after coming into contact with the Products  
19 and absorb the Lead directly through the skin. No clear and reasonable warning is provided with  
20 the Products regarding the carcinogenic or reproductive hazards of Lead.

21 18. Any person acting in the public interest has standing to enforce violations  
22 of Proposition 65 provided that such person has supplied the requisite public enforcers with a  
23 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
24 action within such time. Health & Safety Code §25249.7(d).

25 19. On March 28, 2005, CEH provided a 60-Day “Notice of Violation of  
26 Proposition 65” to the California Attorney General, the District Attorneys of every county in  
27 California, the City Attorneys of every California city with a population greater than 750,000 and  
28 to the named Defendants. The March 28, 2005 Notice of Violation is referred to herein as the

1 Notice. In compliance with Health & Safety Code §25249.7(d) and 22 CCR §12903(b), the  
2 Notice included the following information: the name and address of the violator; the statute  
3 violated; the time period during which violations occurred; specific descriptions of the violations,  
4 including the routes of exposure to Lead from the Products and product categories with a specific  
5 non-exclusive example of the Products sold and used in violation of Proposition 65; and the  
6 name of the specific Proposition 65-listed chemical (Lead) that is the subject of the violation  
7 described in the Notice.

8           20. CEH also sent a Certificate of Merit relating to the Notice to the California  
9 Attorney General, the District Attorneys of every county in California, the City Attorneys of  
10 every California city with a population greater than 750,000 and to the named Defendants. In  
11 compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, the Certificate certified  
12 that CEH's counsel: (1) has consulted with one or more persons with relevant and appropriate  
13 experience or expertise who reviewed facts, studies or other data regarding the exposures to Lead  
14 alleged in the Notice; and (2) based on the information obtained through such consultations,  
15 believes that there is a reasonable and meritorious case for a citizen enforcement action based on  
16 the facts alleged in the attached Notice. In compliance with Health & Safety Code §25249.7(d)  
17 and 11 CCR §3102, the Certificate served on the Attorney General included factual information –  
18 provided on a confidential basis – sufficient to establish the basis for the Certificate, including  
19 the identity of the person(s) consulted by CEH's counsel and the facts, studies or other data  
20 reviewed by such persons.

21           21. None of the public prosecutors with the authority to prosecute violations  
22 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the  
23 Proposition 65 Defendants under Health & Safety Code §25249.5 *et seq.* based on the claims  
24 asserted in the Notice.

25           22. Any person “violating or threatening to violate” the Proposition 65 may be  
26 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to  
27 violate” is defined to mean “to create a condition in which there is a substantial probability that a  
28 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil

1 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

2 **FIRST CAUSE OF ACTION**  
3 **(Violations of the Health & Safety Code §25249.6)**

4 23. Plaintiff realleges and incorporates by reference as if specifically set forth  
5 herein Paragraphs 1 through 22 inclusive.

6 24. By placing the Products into the stream of commerce, Defendants are a  
7 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

8 25. The Defendants know that through the reasonably foreseeable use of the  
9 Products, users of the Products are exposed to Lead. The Defendants intend that the Products be  
10 used in a manner that results in users of the Products being exposed to Lead from the Products.

11 26. The Defendants have failed, and continue to fail, to provide clear and  
12 reasonable warning regarding the carcinogenicity and reproductive toxicity of Lead to users of  
13 the Products.

14 27. Lead is a chemical listed by the State of California as known to cause  
15 cancer, birth defects and other reproductive harm.

16 28. By committing the acts alleged above, the Defendants have at all times  
17 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing  
18 individuals to Lead without first giving clear and reasonable warning to such individuals  
19 regarding the carcinogenicity and reproductive toxicity of Lead.

20 Wherefore, plaintiff prays judgment against the Defendants, as set forth hereafter.

21 **PRAYER FOR RELIEF**

22 Wherefore, plaintiff prays for judgment against Defendants as follows:

23 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil  
24 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of  
25 Proposition 65 according to proof;

26 2. That the Court, pursuant to Health & Safety Code §25249.7(a),  
27 preliminarily and permanently enjoin Defendants from offering the Products for sale in  
28 California without providing clear and reasonable warnings, as CEH shall specify in further



1 application to the Court;

2           3.       That the Court, pursuant to Health & Safety Code §25249.7(a), order  
3 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of  
4 Products sold by Defendants, as CEH shall specify in further application to the Court;

5           4.       That the Court, pursuant to its equitable power, grant restitution to  
6 individuals who would not have purchased the Products had they received a clear and reasonable  
7 warning that the Products contain Lead;

8           5.       That the Court, pursuant to Code of Civil Procedure §1021.5 and any other  
9 applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

10          6.       That the Court grant such other and further relief as may be just and  
11 proper.

12  
13 Dated: November 1, 2005

Respectfully submitted,

14 LEXINGTON LAW GROUP, LLP

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16  
17 

18 Eric S. Somers, Esq.  
19 Attorneys for Plaintiff  
20 CENTER FOR ENVIRONMENTAL HEALTH