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15 Attorneys for Plaintiff
16 JAY EPPS

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN FRANCISCO

19 UNLIMITED CIVIL JURISDICTION

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/11/2025
Clerk of the Court
BY: SAHAR ENAYATI
Deputy Clerk

CGC-25-622281

20 JAY EPPS,

21 Plaintiff,

22 v.

23 WALMART INC.,

24 Defendant.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code §25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff Jay Epps in the public
3 interest of California citizens to enforce the People's right to be informed of certain health hazards
4 caused by exposures to lead, a toxic chemical found in artist paste paints (the Products). The
5 Products are repackaged, produced, stored, distributed, shipped and/or sold online (sold) to
6 California citizens by defendant Walmart Inc.

7 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn
8 consumers and businesses not covered by California's Occupational Safety Health Act, Labor
9 Code §§6300 *et seq.* about the risks of exposure to lead in the Products offered for sale or use
10 throughout the State of California. Individuals, consumers and businesses not covered by
11 California's Occupational Safety Health Act, Labor Code §§6300 *et seq.* who purchase, use or
12 handle the Products are referred to hereinafter as "consumers."

13 3. Defendant has knowledge of the lead contents of the Products which were and do
14 continue to be offered for purchase and/or transacted through walmart.com.

15 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
16 California Health & Safety Code §§25249.6 *et seq.* (Proposition 65), "[n]o person in the course of
17 doing business shall knowingly and intentionally expose any individual to a chemical known to
18 the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
19 to such individual..." Health & Safety Code §25249.6.

20 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
21 lead as a chemical known to cause birth defects and other reproductive harm. Lead became
22 subject to the "clear and reasonable warning" requirements of the act one year later on February
23 27, 1988. 27 Cal. Code Regs. §27001(b); Health & Safety Code §25249.8 and §25249.10(b).

24 6. Defendant imports, distributes, facilitates and/or otherwise offered and/or continue
25 to offer for sale the Products without the mandated health hazard warning in California. The
26 Products include, but are not limited to, the examples listed on Exhibit A.

7. Defendant's failure to warn consumers of the health hazards associated with exposures to lead in conjunction with its sale of the Products are violations of Proposition 65 which subject defendant to being enjoined by the Court of such conduct as well as asserted civil penalties for each violation. Health & Safety Code §25249.7(a) and (b)(1).

8. For defendant's violations and threatened violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel it to provide potential purchasers and ultimate users of the Products with the required warning regarding specific reproductive toxicity associated with exposures to lead. Health & Safety Code §25249.7(a).

9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties against defendant for its violations of Proposition 65 during the relevant period covered by the August 30, 2024, Sixty-Day Notice of Violation.

PARTIES

10. Plaintiff Jay Epps is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products, and he brings this action in the public interest pursuant to Health & Safety Code §25249.7(d).

11. Defendant Walmart Inc. (WALMART) is a person in the course of doing business within the meaning of Health & Safety Code §§25249.6 and 25249.11.

12. WALMART imports, distributes, sells, facilitates, and/or offers the Products for sale in the State of California. WALMART has offered for sale Products, some of which may have been supplied to it by entities that are not subject to enforcement under Proposition 65 because: (i) they have less than ten employees during all relevant periods; and/or (ii) do not have an agent for process of service in California.

1 **VENUE AND JURISDICTION**

2 13. Venue is proper in the Superior Court for the County of San Francisco pursuant to
3 Code of Civil Procedure §§393, 395, and 395.5, because this Court is a court of competent
4 jurisdiction, because plaintiff seeks civil penalties against WALMART, one or more instances of
5 wrongful conduct occurred in this county, and/or WALMART conducts, and continues to conduct
6 business in San Francisco.

7 14. The California Superior Court has jurisdiction over this action pursuant to
8 California Constitution Article VI, section 10, which grants the Superior Court “original
9 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
10 which this action is brought does not specify any other basis of subject matter jurisdiction.

11 15. The California Superior Court has jurisdiction over WALMART based on
12 plaintiff’s information and good faith belief that WALMART is a person, firm, corporation has a
13 principal office or association that is a citizen of the State of California, has sufficient minimum
14 contacts in the State of California, and/or otherwise purposefully avails itself of the California
15 market. WALMART’s purposeful availment renders the exercise of personal jurisdiction
16 (specific, limited or both) by California courts consistent with traditional notions of fair play and
17 substantial justice.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Proposition 65)**

20 16. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 15, inclusive.

22 17. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
23 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed
24 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

25 18. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
26 and intentionally expose any individual to a chemical known to the state to cause cancer or
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1 reproductive toxicity without first giving clear and reasonable warning to such individual...”
2 Health & Safety Code §25249.6.

3 19. On August 30, 2024, plaintiff served a 60-Day Notice of Violation, (the Notice),
4 together with the requisite certificate of merit, on WALMART, the California Attorney General’s
5 Office, and the requisite public enforcement agencies alleging that, as a result of WALMART’s
6 sales of the Products, consumers in California are being exposed to the toxicant lead resulting
7 from their reasonably foreseeable use of the Products, without them first receiving a “clear and
8 reasonable warning” regarding the reproductive toxicity associated with exposures to the heavy
9 metal, as required by Proposition 65.

10 20. WALMART imports, distributes, facilitates for sale, sells, and/or offers the
11 Products for sale on Walmart.com or use in violation of Health & Safety Code §25249.6, and
12 WALMART’s violations have continued beyond its receipt of plaintiff’s Notice. As such,
13 WALMART’s violations are ongoing and continuous in nature and, unless enjoined, could
14 continue until compliance is ensured by the Court.

15 21. After receiving plaintiff’s Notice, no public enforcement agency has commenced
16 and diligently prosecuted a cause of action against WALMART under Proposition 65 to enforce
17 the alleged violations that are the subject of plaintiff’s Notice.

18 22. The Products that WALMART distributes or offers for sale throughout the State of
19 California cause exposures to lead as a result of their reasonably foreseeable use. Such exposures
20 caused by WALMART and endured by consumers in California who purchase, use or handle the
21 Products are not exempt from the “clear and reasonable” warning requirements of Proposition 65,
22 yet WALMART does not provide compliant warnings for the risk of reproductive toxicity of lead.

23 23. WALMART had and continues to have actual knowledge that the Products it
24 imported, distributed, sold, facilitated for sale or offered for sale in California contained lead.

25 24. Lead is present in or on the Products in such a way as to expose consumers and
26 other users through dermal contact, ingestion and/or inhalation during reasonably foreseeable use.

1 25. The normal and reasonably foreseeable use of the Products has caused, and
2 continues to cause, consumer product exposures to lead as defined by 27 California Code of
3 Regulations §25600.1(e).

4 26. WALMART knows that the normal and reasonably foreseeable use of the Products
5 exposes individuals to lead through dermal contact, ingestion and/or inhalation.

6 27. WALMART intends that exposures to lead from the reasonably foreseeable use of
7 the Products will occur by their deliberate, non-accidental participation in the sale, and offering of
8 the Products for sale or use to consumers and others in California.

9 28. WALMART failed to provide a “clear and reasonable warning” to those consumers
10 in California who have been, or who will be, exposed to lead resulting from their use of the
11 Products.

12 29. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
13 directly by California voters, consumers exposed to lead as a result of their use of the Products
14 that WALMART sold without a “clear and reasonable” health hazard warning, have suffered, and
15 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at
16 law.

17 30. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-
18 described acts, WALMART is liable for a maximum civil penalty of \$2,500 per day for each
19 violation.

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

22 **PRAYER FOR RELIEF**

23 Wherefore, plaintiff prays for judgment against WALMART as follows:

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

26 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
27 permanently enjoin WALMART from manufacturing, importing, distributing, or offering the
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1 Products for sale or use in California including at Walmart.com without first providing a “clear
2 and reasonable warning” regarding the harms associated with exposures to lead;

3 3. That the Court, pursuant to Health & Safety Code §25249.7(a), issue preliminary
4 and permanent injunctions mandating that WALMART recall all Products currently in the chain of
5 commerce in California without a “clear and reasonable warning” as defined by 27 California
6 Code of Regulations §25600 *et seq.*;

7 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

8 5. That the Court grant such other and further relief as may be just and proper.
9

10 Dated: February 11, 2025

Respectfully submitted,

11 CHANLER, LLC


12
13 By: 
14 Clifford A. Chanler

EXHIBIT A

<i>Product Exemplars</i>	<i>Walmart Item Number</i>
Williamsburg Artist Oil Colors, Flake White, Ser 6, #6000104-9, 37 ml	Walmart Item No. 7377001369
Old Holland Classic Oil Color - Flake White 1, 225 ml tube Flake White 1 225 ml (7.6 oz)	Walmart Item No. 14673368931
Michael Harding Handmade Artists Oil Color 40ml – Cremnitz White No. 1	Walmart Item No. 155073969