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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

12/04/2024
Clerk of the Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-24-620274

UNLIMITED CIVIL JURISDICTION

JAY EPPS,

Plaintiff,

v.

MICHAELS STORES, INC.; THE
MICHAELS COMPANIES, INC.,

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
3 public interest of the citizens of the State of California to enforce the People's right to be
4 informed of the health hazards caused by exposures to lead, a toxic chemical found in oil-based
5 grounds sold and/or shipped by defendant that are purchased by or shipped to citizens in
6 California (the "Products").

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

14 3. Lead is found at elevated levels in oil-based grounds that defendant imports,
15 distributes, retails or otherwise markets or offers for sale to consumers and other citizens
16 throughout California. Defendant has knowledge of the Products' lead content. Most, if not all,
17 of the sales of the Products were and continue to be offered for purchase and/or transacted through
18 MICHAELS.com.

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

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

6. Defendant imports, distributes, facilitates and/or otherwise offers for sale the Products without the mandated health hazard warning in California. An example of the Products is shown on the table below:

<i>Product Exemplar</i>	<i>UPC Number</i>
Williamsburg Artist Oil Colors Lead Oil Ground, #6009128-6, 473 ml, UPC 7 38797 96440 2	7 38797 96440 2

7. Defendant's failure to warn consumers and other individuals in California of the health hazards associated with exposures to lead in conjunction with defendant's sales of the Products are violations of Proposition 65 which subject defendant, to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code §25249.7(a) and (b)(1).

8. For defendant's violations and threatened (i.e., continuing) violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendant to provide purchasers and users of the Products with the required warning regarding specific health hazards 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 their violations of Proposition 65, some of which are ongoing.

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. Defendants Michaels Stores, Inc. and The Michaels Companies, Inc. (collectively "MICHAELS" or Defendant) are persons in the course of doing business within the meaning of Health & Safety Code §§25249.6 and 25249.11.

12. MICHAELS imports, distributes, sells, facilitates, and/or offers the Products for sale or use in the State of California, or implies by its conduct that it imports, distributes, facilitates for sale, sells, and/or offers the Products for sale or use in the State of California. MICHAELS has offered (and, in many instances, continues to offer) for sale Products supplied to it by entities that are not subject to enforcement under Proposition 65 because: (i) they have fewer than ten employees during all relevant periods; and/or (ii) do not have an agent for process of service in California. Further, in some instances, the Products may be shipped to California consumers, either directly (or indirectly through an MICHAELS fulfillment center in the United States) by exporters located in foreign countries without offices in the United States, after purchase at MICHAELS.com.

13. MICHAELS is often referred to hereinafter as the “defendant.”

VENUE AND JURISDICTION

14. Venue is proper in the Superior Court for the County of San Francisco pursuant to Code of Civil Procedure §§393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against defendant, one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or defendant conducted, and continue to conduct business in San Francisco.

15. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 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.

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

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65)**

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

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

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

12 20. On September 23, 2024, plaintiff served a 60-Day Notice of Violation (the Notice),
13 together with the requisite certificates of merit, on MICHAELS, the California Attorney General’s
14 Office, and the requisite public enforcement agencies alleging that, as a result of defendant’s sales
15 of the Products, consumers in California are being exposed to lead resulting from their reasonably
16 foreseeable use of the Products, without them first receiving a “clear and reasonable warning”
17 regarding the reproductive and developmental harms associated with such exposures, as required
18 by Proposition 65.

19 21. Defendant imports, distributes, facilitates for sale, sells, and/or offers the Products
20 for sale or use in violation of Health & Safety Code §25249.6, and defendant’s violations have
21 continued well beyond their receipt of plaintiff’s Notice. As such, defendant’s violations are
22 ongoing and continuous in nature and, unless enjoined will continue in the future without any
23 information or written answers that they will cease and desist until compliance is ensured.

24 22. After receiving plaintiff’s Notice, no public enforcement agency has commenced
25 and diligently prosecuted a cause of action against defendant under Proposition 65 to enforce the
26 alleged violations that are the subject of plaintiff’s Notice.

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

24. Defendant has knowledge that the Products it imports, distributes, sells, facilitates for sale or offers for sale in California contain lead and, in certain instances in which “lead” was not referenced on the platform, the overwhelming evidence is that the Product contained lead.

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

26. The normal and reasonably foreseeable use of the Products has caused, and continues to cause, consumer product exposures to lead as defined by 27 California Code of Regulations §25600.1(e) and other types of exposures set forth in the Notice.

27. Defendant knows that the normal and reasonably foreseeable use of the Products exposes individuals to lead through dermal contact, ingestion and/or inhalation.

28. Defendant intends that exposures to lead from the reasonably foreseeable use of the Products will occur by its deliberate, non-accidental participation in the importation, distribution, sale, and offering of the Products for sale or use to consumers and others in California.

29. Defendant failed to provide a “clear and reasonable warning” to those consumers and other citizens in California who have been, or who will be, exposed to lead through dermal contact, ingestion and/or inhalation resulting from their use of the Products.

30. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, consumers exposed to lead, through dermal contact, ingestion and/or inhalation as a result of their use of the Products that defendant sold without a “clear and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

31. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-described acts, defendant, and each of them, are liable for a maximum civil penalty of \$2,500 per day for each violation (e.g., each unit sale).

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against defendant as follows:

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

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

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

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

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

Dated: December 4, 2024

Respectfully submitted,

CHANLER, LLC

By:

Clifford A. Chanler
Attorneys for Plaintiff
JAY EPPS