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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**01/31/2025**  
Clerk of the Court  
BY: SAHAR ENAYATI  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

JAY EPPS,  
Plaintiff,  
v.  
MICHAELS STORES, INC.; THE  
MICHAELS COMPANIES, INC.,  
Defendant.

Case No. CGC-24-620274  
**FIRST AMENDED 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 and artist paste paints sold by defendant that are purchased by and/or shipped to citizens  
6 in California (the “Products”).

7 2. By this Complaint, plaintiff seeks to remedy defendant Michaels Stores, Inc. and  
8 The Michaels Companies, Inc. (collectively “MICHAELS” or Defendant) continuing failure to  
9 warn consumers and businesses not covered by California’s Occupational Safety Health Act,  
10 Labor Code §§6300 *et seq.* about the risks of exposure to lead present in the Products that are  
11 manufactured, distributed, and/or offered for sale for used by citizens in the State of California.  
12 Individuals, consumers and businesses not covered by California’s Occupational Safety Health  
13 Act, Labor Code §§6300 *et seq.* who purchase, and/or use or handle the Products are referred to  
14 hereinafter as “consumers.”

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

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

25 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed  
26 lead as a chemical known to cause birth defects and other reproductive harm. Lead became  
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1 subject to the “clear and reasonable warning” requirements of the act one year later on February  
2 27, 1988. 27 Cal. Code Regs. §27001(b); Health & Safety Code §25249.8 and §25249.10(b).

3 6. Defendant imports, distributes, facilitates and/or otherwise offers for sale the  
4 Products without the mandated health hazard warning in California. Examples of the Products are  
5 shown on the table below:

<i>Product Exemplars</i>	<i>UPC Number</i>
Williamsburg Artist Oil Colors Lead Oil Ground, #6009128-6, 473 ml	7 38797 96440 2
MH Michael Harding Handmade Artists Oil Colors Genuine Naples Yellow Dark, No.606 Series 6, PY41, 40ml	5 060154 042238
MH Michael Harding Handmade Artists Oil Colors Cremnitz White, No.308 Series 3, PW1, 40ml	5 060154 043204
Old Holland Classic Oil Colours Flake White No.1, 125ml	

14 7. Defendant’s failure to warn consumers and other individuals in California of the  
15 reproductive hazards associated with exposures to lead in conjunction with its sale of the Products  
16 are violations of Proposition 65 which subject defendant to be enjoined of such conduct as well as  
17 civil penalties assessed for each violation. Health & Safety Code §25249.7(a) and (b)(1).

18 8. For defendant’s violations and threatened (i.e., continuing) violations of Proposition  
19 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendant to provide  
20 purchasers of the Products with the required warning regarding specific health hazards associated  
21 with exposures to lead prior to the sale. Health & Safety Code §25249.7(a).

22 9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties  
23 against defendant for its violations of Proposition 65, some of which are ongoing for the relevant  
24 period specified the two 60-Day Notice of Violation reference below in paragraph 20 and 21.

25 **PARTIES**

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

3 11. MICHAELS is person in the course of doing business within the meaning of Health  
4 & Safety Code §§25249.6 and 25249.11.

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

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

15 **VENUE AND JURISDICTION**

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

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

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

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65)**

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

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

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

15 20. On September 23, 2024, plaintiff served a 60-Day Notice of Violation (the  
16 September Notice), together with the requisite certificates of merit, on MICHAELS, the California  
17 Attorney General’s Office, and the requisite public enforcement agencies alleging that, as a result  
18 of defendant’s sales of oil-based grounds, consumers in California were and likely continue to be  
19 exposed to lead from the reasonably foreseeable use of oil-based grounds, without them first  
20 receiving a “clear and reasonable warning” at the time of purchase of the oil-based grounds on  
21 MICHAELS.com regarding the reproductive and developmental harms associated with such  
22 exposures, as required by Proposition 65.

23 21. On November 22, 2024, plaintiff served a 60-Day Notice of Violation (the  
24 November Notice), together with the requisite certificates of merit, on MICHAELS, the California  
25 Attorney General’s Office, and the requisite public enforcement agencies alleging that, as a result  
26 of defendant’s sales of artist paste paints, consumers in California were and likely continue to be  
27 exposed to lead from the reasonably foreseeable use of the artist paste paints, without them first  
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1 receiving a “clear and reasonable warning” at the time of purchase of the artist paste paints on  
2 MICHAELS.com regarding the reproductive and developmental harms associated with such  
3 exposures, as required by Proposition 65. The September Notice and the November Notice shall  
4 be referred to collectively as the “Notices.”

5 22. As allege in the Notices, during the relevant period, defendant imported, distributed,  
6 facilitated for sale, sold, and/or offered the Products for sale or use on its website in violation of  
7 Health & Safety Code §25249.6, and defendant’s violations before (and likely beyond) have done  
8 so continued beyond its receipt of plaintiff’s Notices. As such, defendant’s violations are ongoing  
9 and continuous in nature and, unless enjoined will continue.

10 23. After receiving each of plaintiff’s Notices, no public enforcement agency has  
11 commenced and diligently prosecuted a cause of action against defendant under Proposition 65 to  
12 enforce the alleged violations that are the subject of plaintiff’s sixty-day letters.

13 24. The Products that defendant imports, distributes, or offers for sale throughout the  
14 State of California cause exposures to lead as a result of the reasonably foreseeable use of the  
15 Products. Such exposures caused by defendant and endured by consumers in California who  
16 purchase, use or handle the Products are not exempt from the “clear and reasonable” warning  
17 requirements of Proposition 65, yet defendant does not provide compliant warnings for the  
18 reproductive toxicity of lead on its website in a clear and conspicuous manner, if at all.

19 25. Defendant has knowledge that the Products contain lead.

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

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

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

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

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

7           5.       That the Court grant such other and further relief as may be just and proper.  
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9 Dated: January 31, 2025

Respectfully submitted,

CHANLER, LLC

11 By:  \_\_\_\_\_

12 Clifford A. Chanler  
13 Attorneys for Plaintiff  
14 JAY EPPS

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