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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 19 2018

Sherri R. Carter, Executive Officer/Clerk
By Nancy Alvarez, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

TAMAR KALOUSTIAN, in the public interest,

Plaintiff,

v.

ORGANIC INDIA USA, LLC; and DOES 1
through 100, inclusive,

Defendants.

Civil Action No.:

10600875

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

[Cal. Health and Safety Code Sec. 25249.6, *et seq.*]

1 Tamar Kaloustian, in the public interest, based on information and belief and investigation
2 of counsel, except for information based on knowledge, hereby makes the following allegations.

3 INTRODUCTION

4
5 1. This Complaint seeks to remedy Defendant's continuing failure to adequately warn
6 individuals in California that they are being exposed to lead and/or inorganic arsenic, which are
7 substances known to the State of California to cause cancer, birth defects and/or other reproductive
8 harm. Such exposures have occurred, and continue to occur, through the manufacture, distribution,
9 sale and consumption of Defendant's **Organic Whole Husk Psyllium** (the "Product"). The Product
10 is available to consumers in California through a multitude of retail channels including, without
11 limitation (a) third-party traditional brick-and-mortar retail locations; (b) via the internet through
12 Defendant's website; and (c) via the internet through third-party retail websites. Consumers are
13 exposed to lead and/or inorganic arsenic when they consume the Product.
14

15 2. Under California's Proposition 65, Health and Safety Code § 25249.5, et seq., it is
16 unlawful for businesses to knowingly and intentionally expose individuals in California to substances
17 known to the State to cause cancer, birth defects or other reproductive harm without providing clear
18 and reasonable warnings to individuals prior to their exposure. Defendant introduced a product
19 contaminated with significant quantities of lead and/or inorganic arsenic into the California
20 marketplace, exposing consumers of the Product to lead and/or inorganic arsenic.
21

22 3. Despite the fact that the Defendant exposes consumers to lead and/or inorganic
23 arsenic, Defendant provides no warning, or inadequate warnings about the hazards associated with
24 lead and/or inorganic arsenic exposure. Defendant's conduct thus violates the warning provision of
25 Proposition 65, Health & Safety Code § 25249.6.
26

27 PARTIES

28 4. Plaintiff brings this enforcement action in the public interest pursuant to Health &

1 Safety Code § 25249.7(d).

2 5. Defendant ORGANIC INDIA USA, LLC ("ORGANIC INDIA") is a person in the
3 course of doing business within the meaning of Health & Safety Code § 25249.11. ORGANIC
4 INDIA manufactures, distributes and/or sells the Product for sale and use in California.

5 6. The true names of DOES 1 through 100 are unknown to Plaintiff at this time. When
6 their identities are ascertained, the Complaint shall be amended to reflect their true names.

7
8 **JURISDICTION AND VENUE**

9 7. The Court has jurisdiction over this action pursuant to Health & Safety Code §
10 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
11 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
12 other trial courts.

13 8. This Court has jurisdiction over Defendant as a business entity that does sufficient
14 business, has sufficient minimum contacts in California or otherwise intentionally avails itself of the
15 California market through the sale, marketing or use of the Product in California and/or by having
16 such other contacts with California so as to render the exercise of jurisdiction over it by the
17 California courts consistent with traditional notions of fair play and substantial justice.

18 9. Venue is proper in Los Angeles County Superior Court because one or more of the
19 violations arise in the County of Los Angeles.

20
21 **BACKGROUND FACTS**

22 10. The People of the State of California have declared by initiative under Proposition
23 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
24 other reproductive harm." Proposition 65 § 1(b).

25 11. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed
26 by the State of California as known to cause cancer, birth defects or other reproductive harm above
27
28

1 certain levels without a "clear and reasonable warning" unless the business responsible for the
2 exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states
3 in pertinent part:

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

7 12. On February 27, 1987, the State of California officially listed lead as a chemical
8 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant under
9 two subcategories: "developmental reproductive toxicity," which means harm to the developing
10 fetus, and "male reproductive toxicity," which means harm to the male reproductive system. 27
11 California Code of Regulations ("C.C.R.") § 27001(c). On October 1, 1992, the State of California
12 officially listed lead and lead compounds as a chemical known to cause cancer. Lead and inorganic
13 arsenic are therefore subject to the "clear and reasonable" warning requirements under Proposition
14 65.
15

16 13. The level of exposure to a chemical causing reproductive toxicity under Proposition
17 65 is determined by multiplying the level in question times the reasonably anticipated rate of
18 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). for exposures to consumer
19 products, the level of exposure is calculated using the reasonably anticipated rate of intake or
20 exposure for average users of the consumer product. 27 C.C.R. § 25821(C)(2).
21

22 14. Defendant's Product contains sufficient quantities of lead and/or inorganic arsenic
23 such that consumers, including pregnant women, who consume the Product are exposed to lead
24 and/or inorganic arsenic. The primary route of exposure for the violations is direct ingestion when
25 consumers orally ingest the Product. These exposures occur in homes, workplaces and everywhere
26 in California where the Product is consumed.

27 15. During the relevant one-year period herein, no clear and reasonable warning was
28

provided with the Product regarding the hazards of lead and/or inorganic arsenic.

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

17. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000 and to the named Defendant. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1) the name and address of each violator; (2) the statute violated; (3) the time period during which violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure to lead from the Product, and (b) the specific type of Product sold and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of the violations described in each Notice.

18. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000 and to the named Defendant. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiff's counsel: (1) has consulted with one or more persons with relevant and appropriate experience or expertise who reviewed facts, studies or other data regarding the exposures to lead and/or inorganic arsenic alleged in each Notice; and (2) based on the information obtained through such consultations, believes that there is a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in each Notice. In compliance with Health & Safety Code §

25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General included factual information-provided on a confidential basis-sufficient to establish the basis for the Certificate, including the identity of the person(s) consulted by the Plaintiff's counsel and the facts, studies or other data reviewed by such persons.

19. None of the public prosecutors with the authority to prosecute violations of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of Plaintiff's Notices.

20. Defendant both knows and intends that individuals will consume the Product, thus exposing them to lead and/or inorganic arsenic.

21. Under Proposition 65, an exposure is "knowing" where the party responsible for such exposure has:

Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that the... exposure is unlawful is required. 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, § 12201).

22. Defendant has been informed of the lead and/or inorganic arsenic in their Products by the 60-Day Notice of Violation and accompanying Certificate of Merit served on them.

23. Defendant also has constructive knowledge that its Products contain lead and/or inorganic arsenic due to the widespread media coverage concerning the problem of lead and/or inorganic arsenic in consumer products.

24. As an entity that manufactures, imports, distributes and/or sells the Product for use in the California marketplace, Defendant knows or should know that the Product contains lead and/or inorganic arsenic and that individuals who consume the Product will be exposed to lead and/or inorganic arsenic. The lead and/or inorganic arsenic exposures to consumers who consume

1 the Product are a natural and foreseeable consequence of Defendant's placing the Product into the
2 stream of commerce.

3 25. Nevertheless, Defendant continues to expose consumers to lead and/or inorganic
4 arsenic without prior clear and reasonable warnings regarding the hazards of lead and/or inorganic
5 arsenic.

6
7 26. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

9 27. Any person "violating or threatening to violate" Proposition 65 may be enjoined in
10 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is
11 defined to mean "to create a condition in which there is a substantial probability that a violation will
12 occur." Health & Safety Code § 25249.11(c). Proposition 65 provides for civil penalties not to
13 exceed \$2,500 per day for each violation of Proposition 65.

14 **CAUSE OF ACTION**

15 (Violations of the Health & Safety Code 25249.6)

16
17 28. Plaintiff realleges and incorporates by reference as if specifically set forth herein
18 Paragraphs 1 through 27, inclusive.

19 29. By placing the Product into the stream of commerce, each Defendant is a person in
20 the course of doing business within the meaning of Health & Safety Code § 25249.11.

21 30. Lead and/or inorganic arsenic is a chemical listed by the State of California as known
22 to cause cancer, and/or birth defects and other reproductive harm.

23
24 31. Defendant knows that average use of the Product will expose users of the Product to
25 lead and/or inorganic arsenic. Defendant intends that the Product be used in a manner that results
26 in exposures to lead and/or inorganic arsenic from the Products.

27 32. Defendant has failed, and continues to fail, to provide clear and reasonable warnings
28

1 to users of the Products, as required by Proposition 65.

2 33. By committing the acts alleged above, Defendant has at all times relevant to this
3 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to lead
4 and/or inorganic arsenic without first giving clear and reasonable warnings to such individuals
5 regarding the hazards of lead and/or inorganic arsenic.
6

7 **PRAYER FOR RELIEF**

8 Wherefore, Plaintiff prays for judgment against Defendant as follows:

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

11 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
12 permanently enjoin Defendant from offering the Product for sale in California without either
13 reformulating the Products such that no Proposition 65 warnings are required or providing prior
14 clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;
15

16 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to
17 take action to stop ongoing unwarranted exposures to lead and/or inorganic arsenic resulting from
18 use of Product sold, as Plaintiff shall specify in further application to the Court;

19 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
20 applicable theory or doctrine, grant Plaintiff her reasonable attorneys' fees and costs of suit; and
21

22 5. That the Court grant such other and further relief as may be just and proper.
23

24 Dated: March 19, 2018

KJT LAW GROUP, LLP

By: _____

26 Vache Thomassian
27 Attorneys for Plaintiff
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