

1 Caspar Jivalagian, Esq., State Bar No.: 282818
2 Vache Thomassian, Esq., State Bar No.: 289053
3 Tro Krikorian, Esq., State Bar No.: 317183
4 **KJT LAW GROUP, LLP**
5 230 N. Maryland Avenue, Suite 306
6 Glendale, California 91206
7 Telephone: 818-507-8525
8 Facsimile: 818-507-8588

9 Attorneys for Plaintiff,
10 KEEP AMERICA SAFE AND BEAUTIFUL

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13 KEEP AMERICA SAFE AND BEAUTIFUL, in
14 the public interest,

15 Plaintiff,

16 v.

17 Eclectic Institute, Inc.; iHerb, LLC; and DOES 1
18 through 100, inclusive,

19 Defendants.

Civil Action No.: 25STCV00234

20 **COMPLAINT FOR INJUNCTIVE RELIEF AND**
21 **CIVIL PENALTIES**

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

KJT LAWGROUP ^{LLP}
Jivalagian | Thomassian

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(3) The retail seller has covered, obscured or altered a warning label that has been affixed to the product pursuant to subsection (b);

(4) The retail seller has received a notice and warning materials for the exposure pursuant to subsections (b) and (c) and the retail seller has sold the product without conspicuously posting or displaying the warning; or

(5) The retail seller has actual knowledge of the potential consumer product exposure requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the product who:

(A) Is a "person in the course of doing business" under Section 25249.11(b) of the Act, and

(B) Has designated an agent for service of process in California, or has a place of business in California.

4. Despite the fact that the Defendants expose consumers to lead, Defendants provide no warning, or inadequate warnings about the reproductive hazards associated with lead exposure. Defendants' conduct thus violates the warning provision of Proposition 65, Health & Safety Code § 25249.6.

PARTIES

5. Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL ("KASB") is a non-profit corporation organized under the laws of California and acting in the interest of the general public, dedicated to protecting the health of California citizens and the environment through the elimination or reduction of toxic chemicals utilized in manufacturing consumer products and to increasing public awareness of those chemicals through the promotion of sound environmental practices and corporate responsibility. KASB is a person within the meaning of Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to Health and Safety Code § 25249.7(d).

6. Defendant ECLECTIC INSTITUTE, INC. ("ECLECTIC") is a person in the

1 course of doing business within the meaning of Health & Safety Code § 25249.11 ECLECTIC
2 manufactures, distributes and/or sells the Product for sale and use in California.

3 7. Defendant IHERB, LLC (“IHERB”) is a person in the course of doing business
4 within the meaning of Health & Safety Code § 25249.11. IHERB is a retailer that sells the Product
5 for sale and use in California.

6 8. The true names of DOES 1 through 100 are unknown to Plaintiff at this time. When
7 their identities are ascertained, the Complaint shall be amended to reflect their true names.
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10 **JURISDICTION AND VENUE**

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

15 10. This Court has jurisdiction over Defendants as business entities that do sufficient
16 business, have sufficient minimum contacts in California or otherwise intentionally avails itself of the
17 California market through the sale, marketing or use of the Product in California and/or by having
18 such other contacts with California so as to render the exercise of jurisdiction over them by the
19 California courts consistent with traditional notions of fair play and substantial justice.

20 11. Venue is proper in Los Angeles County Superior Court because one or more of the
21 violations arise in the County of Los Angeles.

22 **BACKGROUND FACTS**

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

26 13. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed
27 by the State of California as known to cause cancer, birth defects or other reproductive harm above
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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 14. The State of California has officially listed lead as a chemical known to cause cancer
8 and reproductive harm.

9 15. The level of exposure to a chemical causing reproductive toxicity under Proposition
10 65 is determined by multiplying the level in question times the reasonably anticipated rate of
11 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). for exposures to consumer
12 products, the level of exposure is calculated using the reasonably anticipated rate of intake or
13 exposure for average users of the consumer product. 27 C.C.R. § 25821(C)(2).

14 16. Defendant ECLECTIC manufactures, distributes and/or sells the Product for sale
15 and use in California.

16 17. Defendant IHERB is a retailer that sells the Product in California.

17 18. Defendants’ Product contains sufficient quantities of lead such that consumers,
18 including pregnant women, who consume the Product are exposed to lead. The primary route of
19 exposure for the violations is direct ingestion when consumers orally ingest the Product. These
20 exposures occur in homes, workplaces and everywhere in California where the Product is
21 consumed.

22 19. During the relevant one-year period herein, no clear and reasonable warning was
23 provided with the Product regarding the reproductive hazards of lead.

24 20. Any person acting in the public interest has standing to enforce violations of
25 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
26 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
27 within such time. Health & Safety Code § 25249.7(d).

28 21. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff

1 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the
2 District Attorneys of every county in California, the City Attorneys of every California city with a
3 population greater than 750,000 and to the named Defendants. The Notice of Violation of
4 Proposition 65 was filed on or about January 5, 2024. In compliance with Health & Safety Code §
5 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1) the
6 name and address of each violator; (2) the statute violated; (3) the time period during which
7 violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure
8 to lead from the Product, and (b) the specific type of Product sold and used in violation of
9 Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of
10 the violations described in each Notice.

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

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

27 24. Defendants both know and intend that individuals will consume the Product, thus
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1 exposing them to lead.

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

4 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health & Safety
5 Code § 25249.8(a)] is occurring. No knowledge that the... exposure is unlawful is required.
6 27 C.C.R.§ 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
7 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division
8 2, § 12201).

9 26. Defendants have been informed of the lead in their Products by the 60-Day Notice
10 of Violation and accompanying Certificate of Merit served on them.

11 27. Defendants also have constructive knowledge that the Products contain lead due to
12 the widespread media coverage concerning the problem of lead in consumer products.

13 28. As entities that manufacture, import, distribute and/or sell the Product for use in the
14 California marketplace, Defendants know or should know that the Product contains lead and that
15 individuals who consume the Product will be exposed to lead. The lead exposures to consumers
16 who consume the Product are a natural and foreseeable consequence of Defendant’s placing the
17 Product into the stream of commerce.

18 29. Nevertheless, Defendants continue to expose consumers to lead without prior clear
19 and reasonable warnings regarding the reproductive hazards of lead.

20 30. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior to
21 filing this Complaint.

22 31. Any person “violating or threatening to violate” Proposition 65 may be enjoined in
23 any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to violate” is
24 defined to mean “to create a condition in which there is a substantial probability that a violation will
25 occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not to
26 exceed \$2,500 per day for each violation of Proposition 65.

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CAUSE OF ACTION

(Violations of the Health & Safety Code 25249.6)

32. Plaintiff realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 31, inclusive.

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

34. A retail seller is required to provide a warning for consumer product exposure under Section 25249.6 of the Act under specific conditions: if they sell the product under their own or an affiliated entity's brand, if they have intentionally added or caused the creation of a listed chemical in the product, if they have tampered with an existing warning label, if they fail to display a provided warning, or if they are aware of the exposure risk and there is no responsible manufacturer, producer, packager, importer, supplier, or distributor with a business presence or designated agent in California. Defendant CHEDRAUI is a retailer that sells the Product in California.

35. Lead is a chemical listed by the State of California as known to cause cancer and other reproductive harm.

36. Defendants know that average use of the Product will expose users of the Product to lead. Defendants intend that the Product be used in a manner that results in exposures to lead from the Products.

37. Defendants have failed, and continue to fail, to provide clear and reasonable warnings regarding the reproductive toxicity of lead to users of the Products.

38. By committing the acts alleged above, Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to lead without first giving clear and reasonable warnings to such individuals regarding the reproductive toxicity of lead.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties

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against the Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

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

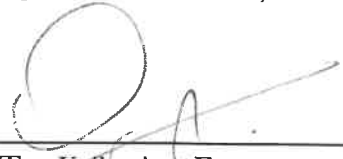
3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants to take action to stop ongoing unwarranted exposures to lead resulting from use of Product sold, as Plaintiff shall specify in further application to the Court;

4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory or doctrine, grant Plaintiff her 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: January 2, 2025

KJT LAW GROUP, LLP

By: 

Tro Krikorian, Esq.
Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL