

1 Lucas Novak (SBN 257484)  
2 LAW OFFICES OF LUCAS T. NOVAK  
3 8335 W Sunset Blvd., Suite 217  
4 Los Angeles, CA 90069  
5 Telephone: (323) 337-9015  
6 Email: lucas.nvk@gmail.com

**FILED**  
Superior Court of California  
County of Los Angeles  
**10/03/2024**

David W. Slayton, Executive Officer / Clerk of Court

By:                     N. Osollo                     Deputy

7 Attorney for Plaintiff, APS&EE, LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 APS&EE, LLC, a limited liability company, )  
11 )  
12 ) Plaintiff, )  
13 )  
14 ) v. )  
15 ) IOVATE HEALTH SCIENCES U.S.A., INC., )  
16 ) a corporation, WALMART, INC., a )  
17 ) corporation, and DOES 1 through 100, )  
18 ) inclusive, )  
19 )  
20 ) Defendants. )  
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CASE NO. 24STCV25370

**PLAINTIFF'S FIRST AMENDED  
COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge: Hon. Elaine Lu  
Dept.: 26  
Compl. Filed: October 1, 2024

Unlimited Jurisdiction

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**INTRODUCTION**

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2           1.       This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public  
3 interest of the citizens of the State of California, a representative action to enforce the People’s  
4 right to be informed of the presence of lead (“Lead”), a chemical known to the State of  
5 California to cause cancer and birth defects or other reproductive harm, in Purely Inspired  
6 Organic Greens With Superfood Blend (a dietary supplement) sold by Defendants.

7           2.       The purpose of this Complaint is to remedy Defendants’ continuing failure to  
8 warn California residents about the risk of exposure to the Lead in the Organic Greens With  
9 Superfood Blend manufactured, distributed, sold, and/or offered for sale to consumers in  
10 California.

11           3.       Defendants have and continue to manufacture, distribute, sell, and/or offer to sell  
12 Purely Inspired Organic Greens With Superfood Blend, including but not limited to 6-31656-  
13 70883-7 (the “Products”).

14           4.       Children and adults are exposed to the Lead when they consume, ingest, touch,  
15 mouth, handle, inhale, or otherwise use the Products.

16           5.       Hazardous levels of the Lead are found in the Products manufactured, distributed,  
17 sold, and/or offered for sale by Defendants to consumers in California.

18           6.       California Health and Safety Code section 25249.6 et seq. (“Proposition 65”)  
19 provides in pertinent part: “[n]o person in the course of doing business shall knowingly and  
20 intentionally expose any individual to a chemical known to the state to cause cancer or  
21 reproductive toxicity without first giving clear and reasonable warning to such individual...”

22           7.       Studies repeatedly conclude that exposure to the Lead is hazardous to the health  
23 of children and adults. Children are especially vulnerable to the toxic effects of Lead.  
24 Accordingly, California has listed the Lead as a chemical known to the state to cause cancer and  
25 birth defects or other reproductive harm, and therefore subject to Proposition 65 warning  
26 requirements.

27           8.       Defendants have and continue to manufacture, distribute, sell, and/or offer to sell  
28 the Products without the required warnings. Defendants’ conduct violates the warning

1 requirements of Proposition 65.

2 **PARTIES**

3 9. Plaintiff is an organization based in California acting in the public interest.  
4 Plaintiff brings this action in the public interest pursuant to California Health and Safety Code  
5 section 25249.7(d).

6 10. Defendant, IOVATE HEALTH SCIENCES U.S.A., INC. is a person in the course  
7 of doing business within the meaning of California Health and Safety Code section 25249.11.  
8 IOVATE HEALTH SCIENCES U.S.A., INC. manufactures, distributes, and/or sells the  
9 Products for sale and use in California.

10 11. Defendant, WALMART, INC. is a person in the course of doing business within  
11 the meaning of California Health and Safety Code section 25249.11. WALMART, INC.  
12 manufactures, distributes, and/or sells the Products for sale and use in California.

13 12. DOES 1 through 100 are each a person in the course of doing business within the  
14 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100  
15 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of  
16 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,  
17 Plaintiff's Complaint shall be amended to reflect their true names.

18 13. The defendants identified in paragraphs 10-12 shall collectively be referred to  
19 herein as "Defendants".

20 **JURISDICTION AND VENUE**

21 14. This Court has jurisdiction over this action pursuant to California Health and  
22 Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction,  
23 and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a  
24 cause not given by statute to other trial courts. Moreover, this action belongs in unlimited  
25 jurisdiction since the amount in controversy exceeds \$35,000 and Plaintiff seeks permanent  
26 injunctive relief.

27 15. This Court has jurisdiction over Defendants because each is a person, firm,  
28 corporation, or association with sufficient minimum contacts in the State of California, or

1 otherwise purposefully avails itself to the California market as to render jurisdiction by the  
2 California courts consistent with traditional notions of fair play and substantial justice.

3 16. Venue is proper in Los Angeles County Superior Court because one or more  
4 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,  
5 and/or because Defendants conducted, and continue to conduct, business in this County with  
6 respect to the Products.

7 **FIRST CAUSE OF ACTION**

8 **(Violations of Health & Safety Code Section 25249.6 et seq.)**

9 17. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
10 Paragraphs 1 through 16, inclusive.

11 18. On July 18, 2024, Plaintiff served a Sixty-Day Notice of Violation with a  
12 Certificate of Merit (the “Notice”), to IOVATE HEALTH SCIENCES U.S.A., INC.,  
13 WALMART, INC., and the various public enforcement agencies with respect to the Proposition  
14 65 violations related to Lead in the Products. In addition, on said date, in compliance with Health  
15 & Safety Code section 25249.7(d), Plaintiff provided confidential factual information sufficient  
16 to establish the basis for the Certificate of Merit to the California Attorney General.

17 19. None of the public prosecutors with the authority to prosecute Proposition 65  
18 violations has commenced and/or is diligently prosecuting the causes of action against  
19 Defendants based on the claims asserted in Plaintiff’s Notices.

20 20. By placing the Products into the stream of commerce, each Defendant is a person  
21 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

22 21. Defendants knew and intended that consumers, including children, will consume,  
23 ingest, touch, mouth, handle, inhale, or otherwise use the Products. Indeed, the Products are  
24 marketed as a dietary supplement. Defendants provide instructions as follows: “Mix 1 scoop  
25 daily with 8 to 10 oz. of water or non-dairy beverage...Stir vigorously or shake well and enjoy.”

26 22. Defendants knew that the Products contain Lead. Defendants, who are in the  
27 business of marketing foods, also should have known or have constructive knowledge that the  
28 Products contain Lead from widespread media coverage and/or other channels of information

1 concerning the presence of Lead in similar products. Furthermore, even after receiving Plaintiff's  
2 Notice, Defendants have continued selling unwarned Products that expose consumers to Lead.

3 23. Lead is a chemical listed by the State of California as known to cause cancer and  
4 birth defects or other reproductive harm.

5 24. Defendants' Products contain sufficient quantities of the Lead such that  
6 consumers, including children, who consume, ingest, touch, mouth, handle, inhale, or otherwise  
7 use the Products are exposed to unsafe levels of Lead. Lead is present in the Products in such a  
8 way as to expose individuals to Lead, as exposure is defined by 27 CCR section 25600.1(e):  
9 "...that results from a person's acquisition, purchase, storage, consumption, or any reasonably  
10 foreseeable use..." Direct and indirect exposure occurs through inhalation, ingestion and/or  
11 dermal contact during the reasonably foreseeable use of the Products.

12 25. Defendants knew or should have known that the reasonably foreseeable use of the  
13 Products exposes individuals to Lead through inhalation, ingestion and/or dermal contact.

14 26. Defendants failed to provide a "clear and reasonable warning" to individuals in  
15 the State of California who were or could become exposed to Lead during the reasonably  
16 foreseeable use of the Products.

17 27. By committing the acts alleged in this Complaint, Defendants have violated  
18 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally  
19 exposing individuals to Lead without first giving clear and reasonable warnings to such  
20 individuals regarding the toxicity of Lead.

21 28. As a result of Defendants' wrongful conduct, individuals in the State of California  
22 have been exposed to Lead through the inhalation, ingestion and/or dermal contact during the  
23 reasonably foreseeable use of the Products without a "clear and reasonable warning", and have  
24 suffered and continue to suffer harm, each and every day since at least July 18, 2023 to the  
25 present.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

28 1. That the Court, pursuant to California Health & Safety Code section 25249.7(b),

1 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation  
2 alleged herein;


3 2. That the Court, pursuant to California Health & Safety Code section 25249.7(a),  
4 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering  
5 the Products for sale in California without providing “clear and reasonable warnings” as defined  
6 by 27 CCR section 25601;

7 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),  
8 order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use  
9 of Products sold by Defendants;

10 4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or  
11 any other applicable theory, grant Plaintiff’s reasonable attorneys’ fees and costs of suit; and  
12 Such other and further relief as may be just and proper.

13  
14 Dated: October 3, 2024

LAW OFFICES OF LUCAS T. NOVAK

15  
16 By:   
17 LUCAS T. NOVAK  
18 Attorney for Plaintiff, APS&EE, LLC  
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