

Electronically FILED by
Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By A. Munoz, Deputy Clerk

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

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INTRODUCTION

1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public interest of the citizens of the State of California, a representative action to enforce the People’s right to be informed of the presence of lead (“Lead”), a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, in Nested Naturals Super Greens (a food supplement) sold by Defendants.

2. The purpose of this Complaint is to remedy Defendants’ continuing failure to warn California residents about the risk of exposure to the Lead in the Super Greens manufactured, distributed, sold, and/or offered for sale to consumers in California.

3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell Nested Naturals Super Greens, including but not limited to chocolate flavor, Marshalls# 025660861 (the “Products”).

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

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

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

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

8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell the Products without the required warnings. Defendants’ conduct violates the warning requirements of Proposition 65.

1 **PARTIES**

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

5 10. Defendant, NESTED NATURALS, LLC is a person in the course of doing
6 business within the meaning of California Health and Safety Code section 25249.11. NESTED
7 NATURALS, LLC manufactures, distributes, and/or sells the Products for sale and use in
8 California.

9 11. Defendant, THE TJX COMPANIES, INC. is a person in the course of doing
10 business within the meaning of California Health and Safety Code section 25249.11. THE TJX
11 COMPANIES, INC. manufactures, distributes, and/or sells the Products for sale and use in
12 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 September 19, 2024, Plaintiff served a Sixty-Day Notice of Violation with a
12 Certificate of Merit (the “Notice”), to NESTED NATURALS, LLC, THE TJX COMPANIES,
13 INC., and the various public enforcement agencies with respect to the Proposition 65 violations
14 related to Lead in the Products. In addition, on said date, in compliance with Health & Safety
15 Code section 25249.7(d), Plaintiff provided confidential factual information sufficient to
16 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 Notice.

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 “Food Supplement” and the package itself states it is for “your daily nutrition.”

25 22. The Maximum Allowable Dose Level (“MADL”) for lead as set by the State of
26 California is 0.5 micrograms per day. 27 Cal Code. Regs. Section 25805. Consuming one serving
27 of the Product will result in ingestion of lead that exceeds the MADL. For example, Plaintiff has
28 a certified test result that shows the Product is made with 0.131 micrograms of lead per gram.

1 According to the Product package, one serving size is 9 grams. Thus, one serving of this Product
2 will cause a consumer to ingest 1.179 micrograms of lead. This is over two times the MADL.

3 23. Defendants knew that the Products contain Lead. Defendants, who are in the
4 business of marketing foods and dietary supplements, also should have known or have
5 constructive knowledge that the Products contain Lead from testing they completed or should
6 have completed and from widespread media coverage and/or other channels of information
7 concerning the presence of Lead in similar products. For example, in 2016, The California
8 Attorney General's Office entered into a Consent Judgment with several manufacturers and
9 distributors of certain packaged ginger food products, and in the Consent Judgment, the parties
10 agreed that Proposition 65 warnings would be required on any ginger food products that contain
11 lead content exceeding 40 parts per billion.¹

12 24. Lead is a chemical listed by the State of California as known to cause cancer and
13 birth defects or other reproductive harm.

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

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

23 27. Defendants failed to provide a "clear and reasonable warning" to individuals in
24 the State of California who were or could become exposed to Lead during the reasonably
25 foreseeable use of the Products.

26 28. By committing the acts alleged in this Complaint, Defendants have violated

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28 ¹ *People of the State of California v. Dakota Brothers, et al.*, San Francisco Superior Court, Case No. CGC-13-531045. (To put 40 parts per billion into context, Plaintiff's test result of 1.179 micrograms per gram equals 1.179 parts per million, or 1,179 parts per billion.)

1 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally
2 exposing individuals to Lead without first giving clear and reasonable warnings to such
3 individuals regarding the toxicity of Lead.

4 29. As a result of Defendants' wrongful conduct, individuals in the State of California
5 have been exposed to Lead through the inhalation, ingestion and/or dermal contact during the
6 reasonably foreseeable use of the Products without a "clear and reasonable warning", and have
7 suffered and continue to suffer harm, each and every day since at least September 19, 2023 to the
8 present.

9 **PRAYER FOR RELIEF**

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

11 1. That the Court, pursuant to California Health & Safety Code section 25249.7(b),
12 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation
13 alleged herein;

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

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

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

24 Dated: December 3, 2024

LAW OFFICES OF LUCAS T. NOVAK

25
26 By: 

27 LUCAS T. NOVAK
28 Attorney for Plaintiff, APS&EE, LLC