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

CASE NO. 25STCV11656

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

(Health & Safety Code § 25249.6 et seq.)

Judge:  
Dept.:  
Compl. Filed:

Unlimited Jurisdiction

1                    *Plaintiff's Complaint for Civil Penalties and Injunctive Relief*

## 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 BareOrganics Spirulina Powder (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 Spirulina Powder 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 BareOrganics Spirulina Powder, including but not limited to 8-18423-02967-2 (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.

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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, SWANSON HEALTH PRODUCTS, INC. is a person in the course of  
6 doing business within the meaning of California Health and Safety Code section 25249.11.  
7 SWANSON HEALTH PRODUCTS, INC. manufactures, distributes, and/or sells the Products  
8 for sale and use in California.

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

14 12. The defendants identified in paragraphs 10-11 shall collectively be referred to  
15 herein as "Defendants".

16 **JURISDICTION AND VENUE**

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

23 14. This Court has jurisdiction over Defendants because each is a person, firm,  
24 corporation, or association with sufficient minimum contacts in the State of California, or  
25 otherwise purposefully avails itself to the California market as to render jurisdiction by the  
26 California courts consistent with traditional notions of fair play and substantial justice.

27 15. Venue is proper in Los Angeles County Superior Court because one or more  
28 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,

1 and/or because Defendants conducted, and continue to conduct, business in this County with  
2 respect to the Products.

3 **FIRST CAUSE OF ACTION**

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

5 16. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
6 Paragraphs 1 through 15, inclusive.

7 17. On December 30, 2024, Plaintiff served a Sixty-Day Notice of Violation with a  
8 Certificate of Merit (the “Notice”), to SWANSON HEALTH PRODUCTS, INC., BareOrganics,  
9 LLC, Walmart, Inc., and the various public enforcement agencies with respect to the Proposition  
10 65 violations related to Lead in the Products. In addition, on said date, in compliance with Health  
11 & Safety Code section 25249.7(d), Plaintiff provided confidential factual information sufficient  
12 to establish the basis for the Certificate of Merit to the California Attorney General.

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

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

18 20. Defendants knew and intended that consumers, including children, will consume,  
19 ingest, touch, mouth, handle, inhale, or otherwise use the Products. Indeed, the Products are  
20 marketed as a “Superfood”. The package itself states it is “one of the world’s most concentrated  
21 sources of functional nutrients, offering natural health benefits to boost any recipe...” The  
22 package provides a suggested use: “Add 1 ½ teaspoons to your favorite green smoothie or add to  
23 your favorite recipes to taste.”

24 21. The Maximum Allowable Dose Level (“MADL”) for lead as set by the State of  
25 California is 0.5 micrograms per day. 27 Cal Code. Regs. Section 25805. Consuming one serving  
26 of the Product will result in ingestion of lead that exceeds the MADL. For example, Plaintiff has  
27 a certified test result that shows the Product is made with 0.858 micrograms of lead per gram.  
28 According to the Product package, one serving size is 3 grams. Thus, one serving of this Product

1 will cause a consumer to ingest 2.57 micrograms of lead. This is over *five times* the MADL.

2       22. Defendants knew that the Products contain Lead. Defendants, who are in the  
3 business of marketing foods and dietary supplements, also should have known or have  
4 constructive knowledge that the Products contain Lead from testing they completed or should  
5 have completed and from widespread media coverage and/or other channels of information  
6 concerning the presence of Lead in similar products. Indeed, the Products were produced to  
7 include a short-form Proposition 65 warning on the physical label of the Products. Defendants,  
8 however, sell the Products on the internet and elsewhere and have eliminated, misrepresented,  
9 and/or obscured the warning. For example, the product display page on Walmart.com says:  
10 “Warnings: None.” Moreover, the Product display page and Product description have no  
11 warnings, and the online pictures of the Product package/label do not have a warning and  
12 actually show a different label from the one on the actual Product, thus leading consumers to  
13 believe there is no potential lead exposure from these Products. The manner in which the  
14 Products are sold by Defendants online does not comply with the warning regulations.  
15 Consumers purchase the Products online without being warned of the lead exposures, and only  
16 upon arrival is a warning visible on the package if it is even seen at all, since the purchaser  
17 already reviewed the Product details online. The California Office of Environmental Health  
18 Hazard Assessment (“OEHHA”) is clear that this warning method is not clear and reasonable,  
19 stating:

20       “OEHHA is sympathetic to concerns about the difficulty of receiving warnings  
21 post-purchase and recognizes that the circumstances of some transactions such as  
22 internet and catalog sales are particularly challenging to a consumer who has  
23 made a purchase online and has received the item. In this situation, a person may  
24 be faced with the difficulty of returning an item through the mail if they do not  
25 wish to keep it. For these reasons, OEHHA has established safe harbor warning  
26 methods for internet and catalog sales wherein **a warning must be provided on  
the webpage** or in the catalog as well as on the product.” 09/16 OEHHA Final  
Statement of Reasons, Article 6 Clear And Reasonable Warnings, at 77 (emphasis  
added).

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

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

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

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

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

28. As a result of Defendants' wrongful conduct, individuals in the State of California have been exposed to Lead through the inhalation, ingestion and/or dermal contact during the reasonably foreseeable use of the Products without a "clear and reasonable warning", and have suffered and continue to suffer harm, each and every day since at least December 30, 2023 to the present.

## PRAYER FOR RELIEF

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

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

2. That the Court, pursuant to California Health & Safety Code section 25249.7(a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering


1 the Products for sale in California without providing “clear and reasonable warnings” as defined  
2 by 27 CCR section 25601;

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

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

9  
10 Dated: April 22, 2025

LAW OFFICES OF LUCAS T. NOVAK

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12 By:   
13 LUCAS T. NOVAK  
14 Attorney for Plaintiff, APS&EE, LLC  
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