1 2 3 4 5 6	ENTORNO LAW, LLP Noam Glick (SBN 251582) Jake W. Schulte (SBN 293777) Craig M. Nicholas (SBN 178444) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 629-0527 Email: noam@entornolaw.com Email: jake@entornolaw.com Email: craig@entornolaw.com	ELECTRONICALLY FILED Superior Court of California, County of Alameda 10/26/2022 at 02:15:36 PM By: Chan Huang, Deputy Clerk
7 8	Attorneys for Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC.	
9	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
10	IN AND FOR THE COUNTY OF ALAMEDA	
11	ENVIRONMENTAL HEALTH ADVOCATES, INC.,	
12	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
13	V.	(Health & Safety Code § 25249.6 et seq.)
14	HI-TECH PHARMACEUTICALS, INC., a Georgia corporation; and DOES 1 through 100, inclusive,	
15	Defendants.	
16		
17 18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

I. INTRODUCTION

- 1. This Complaint is a representative action brought by Environmental Health Advocates, Inc. ("Plaintiff") in the public interest of the citizens of the State of California ("the People"). Plaintiff seeks to remedy Defendant's failure to inform the People of exposure to cadmium, a known carcinogen. Defendant exposes consumers to cadmium by manufacturing, importing, selling, and/or distributing supplement powder including, but not limited to, Mass Gainz Iforce Nutrition Protein Powder ("Products"). Defendant knows and intends that customers will ingest Products containing cadmium.
- 2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code, section 25249.6 et seq. ("Proposition 65"), "[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. . . ." (Health & Safety Code, § 25249.6.)
- 3. California identified and listed cadmium as a chemical known to cause cancer as early as October 1, 1987, and as a chemical known to cause developmental/reproductive toxicity on May 1, 1997.
- 4. Defendant failed to sufficiently warn consumers and individuals in California about potential exposure to cadmium in connection with Defendant's manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.
- 5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in California before exposing them to cadmium in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65 along with attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)

II. PARTIES

6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. ("Plaintiff") is a corporation in the State of California dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposure from consumer products. It brings this action in the public interest pursuant to Health and Safety Code, section 25249.7.

- 7. Defendant HI-TECH PHARMACEUTICALS, INC. ("Hi-Tech") is a corporation organized and existing under the laws of Georgia. Hi-Tech is registered to do business in California, and does business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Hi-Tech manufactures, imports, sells, or distributes the Products in California and Alameda County.
- 8. Plaintiff does not know the true names and/or capacities, whether individual, partners, or corporate, of the defendant sued herein as DOES 1 through 100, inclusive, and for that reason sues said defendant under fictitious names. Plaintiff will seek leave to amend this Complaint when the true names and capacities of this defendant have been ascertained. Plaintiff is informed and believes and thereon alleges that this defendant is responsible in whole or in part for the remedies and penalties sought herein.

VENUE AND JURISDICTION

- 9. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.
- 10. Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendant conducted and continue to conduct business in this County as it relates to Products.
- 11. Defendant has sufficient minimum contacts in the State of California or otherwise purposefully avail themselves of the California market. Exercising jurisdiction over Defendant would be consistent with traditional notions of fair play and substantial justice.

[Rest of page intentionally left blank.]

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION (Violation of Proposition 65 – Against all Defendants)

- 13. Plaintiff incorporates by reference each and every allegation contained above.
- 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.
- 15. Defendant manufactured, imported, sold, and/or distributed Products containing cadmium in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the future.
- 16. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to provide a clear and reasonable warning to consumers and individuals in California who may be exposed to cadmium through reasonably foreseeable use of the Products.
- 17. Products expose individuals to cadmium through direct ingestion. This exposure is a natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As such, Defendant intend that consumers will ingest Products, exposing them to cadmium.
- 18. Defendant knew or should have known that the Products contained cadmium and exposed individuals to cadmium in the ways provided above. The Notice informed Defendant of the presence of cadmium in the Products. Likewise, media coverage concerning cadmium and related chemicals in consumer products provided constructive notice to Defendant.
 - 19. Defendant's actions in this regard were deliberate and not accidental.
- 20. More than sixty days prior to naming the defendant in this lawsuit, Plaintiff issued a 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff provided the Notice to the various required public enforcement agencies along with a certificate of merit. The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to cadmium contained in the Products.
- 21. The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendant.