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7 Attorneys for Plaintiff
ENVIRONMENTAL HEALTH ADVOCATES, INC.
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF ALAMEDA**

11 ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

12 Plaintiff,

13 v.

14 HI-TECH PHARMACEUTICALS, INC., a
Georgia corporation; and DOES 1 through 100,
inclusive,

15 Defendants.
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Case No.: **22CV020597**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

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2 1. This Complaint is a representative action brought by Environmental Health Advocates,
3 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
4 seeks to remedy Defendant’s failure to inform the People of exposure to cadmium, a known carcinogen.
5 Defendant exposes consumers to cadmium by manufacturing, importing, selling, and/or distributing
6 supplement powder including, but not limited to, Mass Gainz – Iforce Nutrition Protein Powder
7 (“Products”). Defendant knows and intends that customers will ingest Products containing cadmium.

8 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
9 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
10 business shall knowingly and intentionally expose any individual to a chemical known to the state to
11 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual. . . .” (Health & Safety Code, § 25249.6.)

13 3. California identified and listed cadmium as a chemical known to cause cancer as early
14 as October 1, 1987, and as a chemical known to cause developmental/reproductive toxicity on May 1,
15 1997.

16 4. Defendant failed to sufficiently warn consumers and individuals in California about
17 potential exposure to cadmium in connection with Defendant’s manufacture, import, sale, or distribution
18 of Products. This is a violation of Proposition 65.

19 5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in
20 California before exposing them to cadmium in Products. (Health & Safety Code, § 25249.7(a).)
21 Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65 along with
22 attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

II.
PARTIES

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

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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.

