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14 Environmental Health Advocates, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

17 ENVIRONMENTAL HEALTH ADVOCATES,
18 INC.,

19 Plaintiff,

20 v.

21 CSB NUTRITION CORPORATION, a Utah
22 corporation; ENDURANCE MARKETING
23 GROUP, INC., a Montana corporation; SAGE
24 TO SUMMIT, LLC, a California limited
25 liability company; ATLANTIS INDUSTRIES,
26 LLC, a Montana limited liability company; and
27 DOES 1 through 100, inclusive,

28 Defendants.

Case No.: **24CV097730**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

10/30/2024 at 09:21:11 AM

By: Milagros Cortez,
Deputy Clerk

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 Defendants' failure to inform the People of exposure to lead, a known carcinogen and
5 reproductive toxin. Defendants expose consumers to lead by manufacturing, importing, selling, and/or
6 distributing dietary supplements including, but not limited to, Hammer Nutrition Tissue Rejuvenator
7 Joint Health Supplement (“Products”). Defendants know and intend that customers will ingest Products
8 containing lead.

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

14 3. California identified and listed lead as a chemical known to cause cancer as early as
15 October 1, 1992, and as a chemical known to cause developmental/reproductive toxicity on February
16 27, 1987.

17 4. Defendants failed to sufficiently warn consumers and individuals in California about
18 potential exposure to lead in connection with Defendants' manufacture, import, sale, or distribution of
19 Products. This is a violation of Proposition 65.

20 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
21 in California before exposing them to lead in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff
22 also seeks civil penalties against Defendants for violations of Proposition 65 along with attorney’s fees
23 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.

1 7. Defendant CSB NUTRITION CORPORATION ("CSB Nutrition") is a corporation
2 organized and existing under the laws of Utah. CSB Nutrition is registered to do business in California,
3 and does business in the County of Alameda, within the meaning of Health and Safety Code, section
4 25249.11. CSB Nutrition manufactures, imports, sells, or distributes the Products in California and
5 Alameda County.

6 8. Defendant ENDURANCE MARKETING GROUP, INC. ("Endurance Marketing") is a
7 corporation organized and existing under the laws of Montana. Endurance Marketing is registered to do
8 business in California, and does business in the County of Alameda, within the meaning of Health and
9 Safety Code, section 25249.11. Endurance Marketing manufactures, imports, sells, or distributes the
10 Products in California and Alameda County.

11 9. Defendant SAGE SUMMIT, LLC ("Sage ") is a limited liability company organized
12 and existing under the laws of California. Sage is registered to do business in California, and does
13 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
14 Sage manufactures, imports, sells, or distributes the Products in California and Alameda County.

15 10. Defendant ATLANTIS INDUSTRIES, LLC ("Atlantis") is a limited liability company
16 organized and existing under the laws of Montana. Atlantis is registered to do business in California,
17 and does business in the County of Alameda, within the meaning of Health and Safety Code, section
18 25249.11. Atlantis manufactures, imports, sells, or distributes the Products in California and Alameda
19 County.

20 11. Plaintiff does not know the true names and/or capacities, whether individual, partners,
21 or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
22 said Defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true
23 names and capacities of these Defendants have been ascertained. Plaintiff is informed and believes and
24 thereon alleges that these Defendants are responsible in whole or in part for the remedies and penalties
25 sought herein.

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1 19. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
2 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
3 to lead through reasonably foreseeable use of the Products.

4 20. Products expose individuals to lead through direct ingestion. This exposure is a natural
5 and foreseeable consequence of Defendants placing Products into the stream of commerce. As such,
6 Defendants intend that consumers will ingest Products, exposing them to lead.

7 21. Defendants knew or should have known that the Products contained lead and exposed
8 individuals to lead in the ways provided above. The Notice informed Defendants of the presence of
9 lead in the Products. Likewise, media coverage concerning lead and related chemicals in consumer
10 products provided constructive notice to Defendants.

11 22. Defendants' actions in this regard were deliberate and not accidental.

12 23. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
13 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff
14 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
15 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
16 California of the health hazards associated with exposures to lead contained in the Products.

17 24. The appropriate public enforcement agencies provided with the Notice failed to
18 commence and diligently prosecute a cause of action against Defendants.

19 25. Individuals exposed to lead contained in Products through direct ingestion resulting
20 from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm.
21 There is no other plain, speedy, or adequate remedy at law.

22 26. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
23 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
24 appropriate pursuant to Health and Safety Code, section 25249.7(a).

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants as follows:

- 3 1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that
4 damages total a minimum of \$1,000,000;
- 5 2. A preliminary and permanent injunction against Defendants from manufacturing,
6 importing, selling, and/or distributing Products in California without providing a clear and reasonable
7 warning as required by Proposition 65 and related Regulations;
- 8 3. Reasonable attorney’s fees and costs of suit; and
- 9 4. Such other and further relief as may be just and proper.
- 10

11 Respectfully submitted:

12 Dated: October 30, 2024

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