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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff,

v.

**21ST CENTURY HEALTHCARE, INC., et
al.**

Defendants.

Case No.: RG08426937

ASSIGNED FOR ALL PURPOSES TO:
JUDGE WYNNE CARVILL
DEPARTMENT 21

**CONSENT JUDGMENT AS TO
DEFENDANT METABOLIC
MAINTENANCE PRODUCTS, INC.**

Trial Date: May 6, 2013
Action Filed: December 23, 2008

FILED
ALAMEDA COUNTY

JUN 19 2012

CLERK OF THE SUPERIOR COURT

By

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1 **1. INTRODUCTION**

2 **1.1 Introduction**

3 This Consent Judgment is entered pursuant to a stipulation by and between Plaintiff, the
4 People of the State of California, and Defendant Metabolic Maintenance Products, Inc. ("MMP,"
5 or "Defendant"). Plaintiff and Defendant are collectively referred to as the "parties," and
6 individually as a "party," in this Consent Judgment.

7 **1.2 Plaintiff**

8 Plaintiff is the People of the State of California. The Safe Drinking Water and Toxic
9 Enforcement Act of 1986, California Health and Safety Code section 25249.5 et seq.
10 ("Proposition 65"), at section 25249.7, subdivision (c), provides that actions to enforce
11 Proposition 65 may be brought by the Attorney General in the name of the People of the State of
12 California or by any district attorney. California Business and Professions Code sections 17203
13 and 17204 also provide that actions to prohibit unfair and unlawful business practices may be
14 brought in the name of the People of the State of California by the Attorney General or by any
15 district attorney.

16 **1.3 Defendant**

17 The settling defendant is Metabolic Maintenance Products, an Oregon corporation, with
18 its principal place of business at Sisters, Oregon. For purposes of this Consent Judgment,
19 Defendant acknowledges that it is currently a business with more than 10 employees and that it
20 currently therefore is a "person in the course of doing business" within the meaning of
21 Proposition 65. If in the future Defendant employs fewer than 10 employees (according to the
22 definition of "employee" in California Code of Regulations, title 27, section 25102, subdivision
23 (h)), then Section 2 shall not apply for the period in which Defendant has fewer than 10
24 employees, provided that Defendant first notifies the People in writing that it employs fewer than
25 10 employees and provides proof of the number of employees it employs. Until such time as the
26 Defendant provides notices and proof as set forth above, it shall continue to comply with the
27 terms of the Consent Judgment.

1 **1.4 General Allegations**

2 The People's Complaint alleges that, through the manufacture, distribution, and/or sale of
3 vitamin supplements to consumers in California, Defendant violated the provisions of Proposition
4 65 and engaged in unfair competition, as defined in Business and Professions Code section
5 17200, by knowingly exposing persons to lead, a chemical known to cause cancer and
6 reproductive toxicity, without providing a clear and reasonable warning to such individuals.

7 **1.5 Covered Products**

8 The term "Covered Product" means a dietary supplement that Defendant manufactures for
9 sale in California, Distributes into California, and/or directly sells to a consumer in California and
10 for which 21 Code of Federal Regulations part 101.36(b)(2) (2011) requires a label that supplies
11 information indicating that the maximum recommended daily dose of the product:

12 (a) Contains 250 milligrams or more of calcium or 100 milligrams or more of
13 magnesium; or

14 (b) Contains 100 percent or more of the Reference Daily Intake (as set forth in 21
15 Code of Federal Regulations part 101.9(c)(8)(iv) (2011)) of four or more of the following
16 vitamins and minerals (each of which is hereinafter referred to as "Specified Vitamins and
17 Minerals"): calcium, iron, Vitamin A, Vitamin D, Vitamin C, folate (folic acid, folacin),
18 Vitamin B-6 (pyridoxine), or Vitamin B-12 (cyanocobalamin); or

19 (c) Contains 50 percent or more of the Reference Daily Intake (as set forth in 21 Code
20 of Federal Regulations part 101.9(c)(8)(iv) (2011)) of any of the Specified Vitamins and
21 Minerals and also meets any of the following criteria:

22 (1) The product is identified on the label or in advertisements or marketing
23 material as a vitamin-mineral, multivitamin, or multi-mineral supplement;

24 (2) The product is identified on the label or in advertisements or marketing
25 material as a prenatal, lactation, or fertility supplement;

26 (3) The product is identified on the label or in advertisements or marketing
27 material as a supplement for children or teenagers;

28 (4) The product contains 0.4 milligrams or more of folate (folic acid, folacin)

per daily dose; or

(5) The product is intended to be consumed primarily by, or is marketed primarily toward, any of the following persons: children under the age of 18; pregnant women; lactating women; or women or men seeking to enhance fertility, improve reproductive health, or conceive a child.

The presence of substances such as herbs, herbal extracts, or amino acids does not preclude a product from falling within the definition of Covered Products if it otherwise falls within the terms set forth. Covered Products do not, however, include the following:

- (i) Fortified foods, i.e., foods to which additional vitamins and minerals have been added, including but not limited to cereal or pasta with vitamins and minerals added, or iodized salt;
- (ii) Beverages that otherwise would fall within the definition;
- (iii) Meal replacement products, i.e., products that are intended to provide calories or nutritional benefits sufficient to replace a meal; or
- (iv) Protein supplements, i.e., products supplying at least 10 grams of protein per daily serving.

A list of the Covered Products manufactured, distributed, and/or sold by Defendant and subject to this Consent Judgment is set forth in Exhibit A. Any product manufactured, distributed, and/or sold by Defendant that is not set forth in Exhibit A is not covered by the injunctive relief provisions of Section 2, except as specifically provided in Section 1.6 or Section 9 below.

“Distributing into California” (or “Distribute[s][d] into California”) means to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Defendant knows will sell the Covered Product in California.

1.6 Private Label Products

(a) Defendant will submit to the Office of the Attorney General, prior to the Effective Date, a list of “private label” or contract-manufactured products that meet the definition of Covered Products, along with the products’ brand name and customer and any additional

1 information necessary to identify the products as corresponding to Covered Products listed on
2 Exhibit A. Defendant deems this identifying information to be confidential, proprietary, or trade
3 secret. This identifying information, as updated from time to time, is referred to herein as
4 "Confidential Private Label Information." Defendant shall provide to the Attorney General
5 updates to the Confidential Private Label Information at least annually by March 1 of each year,
6 unless there is no change to the list from the previous year, until such time that Defendant no
7 longer has a duty under this Consent Judgment to test the Covered Products. The update
8 requirement in the preceding sentence terminates five (5) years from the Effective Date of this
9 Consent Judgment. Private label or contract-manufactured products that Defendant identifies in
10 the most recent Confidential Private Label Information submitted to the Attorney General each
11 year as products listed on Exhibit A shall be Covered Products for the purposes of this Consent
12 Judgment. Notwithstanding anything else in this Section 1.6(a), Defendant shall not be required
13 to update its Confidential Private Label Information more frequently than twice per year.

14 (b) All Confidential Private Label Information provided to the Attorney General, whether
15 before or after the Effective Date, is deemed to be Protected Information under the Protective
16 Order entered in this case on November 19, 2009 ("Protective Order"). For the purposes of this
17 Consent Judgment, all elements of the Protective Order shall apply to Confidential Private Label
18 Information, except that (a) Paragraphs 6, 7, 9, 16, and 17 of the Protective Order do not apply to
19 Confidential Private Label Information; and (b) documents containing Confidential Private Label
20 Information need not be consecutively Bates-numbered. Further, to the extent the Court modifies
21 the Protective Order upon motion by any party to this action in accordance with Paragraph 18 of
22 the Protective Order, such modification shall not apply to the application of the Protective Order
23 to this Consent Judgment without the written consent of Defendant.

24 (c) Notwithstanding anything herein or in the Protective Order to the contrary, the People
25 shall disclose Confidential Private Label Information if requested to do so by Defendant. The
26 People will return or destroy all Confidential Private Label Information submitted by Defendant
27 if, after the date that is five (5) years from the Effective Date, Defendant requests in writing that
28 the People do so.

1 **1.7 Released Products**

2 The term "Released Products" means the Covered Products set forth in Exhibit B.

3 **1.8 Complaint**

4 On December 23, 2008, the People filed a complaint in the Superior Court in and for the
5 County of Alameda against Defendant and certain other vitamin supplement manufacturers,
6 distributors, and sellers, alleging violations of Proposition 65 and acts of unfair competition, as
7 defined in Business and Professions Code section 17200, based on the alleged exposures to lead
8 contained in the vitamin supplements. On March 27, 2009, the People filed a First Amended
9 Complaint ("Complaint" or "Action"). Defendant filed an answer to the Complaint on July 21,
10 2009.

11 **1.9 Complaint Deemed Amended**

12 This Consent Judgment amends the Complaint, effective as of March 27, 2009, such that
13 all allegations in the Complaint regarding "Vitamin Supplements" (or "vitamin supplements")
14 sold, manufactured, and/or distributed by Defendant are replaced by allegations regarding the
15 Covered Products.

16 **1.10 No Admissions or Findings**

17 Defendant denies the material, factual and legal allegations contained in Plaintiff's
18 Complaint and maintains that all Covered Products that it sold and distributed in California have
19 been and are in compliance with all laws, including Proposition 65. The parties enter into this
20 Consent Judgment pursuant to a settlement of certain disputed claims between the parties as
21 alleged in the Complaint for the purpose of avoiding prolonged and costly litigation between the
22 parties hereto. By execution of this Consent Judgment, Defendant does not admit any facts or
23 conclusions of law suggesting or demonstrating any violations of Proposition 65, the Unfair
24 Competition Act, or any other statutory, common law or equitable requirements relating to the
25 Covered Products. Nothing in this Consent Judgment shall be construed as an admission by
26 Defendant of any fact, issue of law, or violation of law. Except as expressly set forth herein,
27 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, or defense
28 Defendant may have in this or any other or future legal proceedings. However, this Section shall

1 not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under
2 this Consent Judgment. By execution of this Consent Judgment, the People do not admit any
3 facts or conclusions of law concerning any violations of Proposition 65, the Unfair Competition
4 Act, or any other statutory, common law or equitable requirements relating to the Covered
5 Products. Nothing in this Consent Judgment shall be construed as an admission by the People of
6 any fact or issue of law, nor shall entering into the Consent Judgment constitute or be construed
7 as an admission by the People of any fact or issue of law. Except as expressly set forth herein,
8 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, or
9 argument the People may have in this or any other or future legal proceedings.

10 **1.11 Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the parties stipulate that this Court has
12 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper
13 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions
14 of this Consent Judgment. This Consent Judgment shall have no application or effect on
15 Defendant for Covered Products or other products distributed or sold by Defendant to consumers
16 outside of the state of California.

17 **1.12 Effective Date**

18 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
19 Consent Judgment is entered by the Court.

20 **2. INJUNCTIVE RELIEF/ PERMANENT INJUNCTION**

21 **2.1.** On and after March 1, 2012, Defendant shall be permanently enjoined and
22 restrained, pursuant to Health & Safety Code §25249.7 and Business and Professions Code
23 § 17203, from manufacturing for sale in California, Distributing into California, or directly selling
24 to a consumer in California any Covered Product for which the maximum daily dose
25 recommended on the label contains more than 0.5 micrograms of lead, after subtracting out the
26 amount of lead deemed "naturally occurring" for each ingredient listed in Table 2.4 below that is
27 present in the Covered Product, as described in Section 2.4 below, unless such Covered Product
28 complies with the warning requirement set forth in Section 2.2 below. This injunction shall not

1 apply to individual units of Covered Product that Defendant puts into the stream of commerce
2 before March 1, 2012. To put into the stream of commerce means the individual unit of Covered
3 Product was put into final packaging for consumer sale, Distributed into California, or sold in
4 California by Defendant. Defendant shall not reduce the recommended dose (by size, number of
5 tablets, volume, weight, or frequency) of a Covered Product solely to avoid the warning
6 requirement of Section 2.1. Nothing in this Consent Judgment shall impair or limit the ability of
7 Defendant to reformulate, relabel, or alter the dose of any Covered Product for other reasons.

8 **2.2. Clear and Reasonable Warnings.** For those Covered Products that are subject to
9 the warning requirement of Section 2.1, Defendant shall provide one of the following warnings
10 (“Warning”) as specified below:

11 **[California Residents Proposition 65] WARNING [(California Proposition 65)]:**

12 This product contains [lead,] [a] chemical[s] known [to the State of
California] to cause [cancer and] birth defects or other reproductive harm.

13 **[California Residents Proposition 65] WARNING [(California Proposition 65)]:**

14 This product contains [lead,] [a] substance[s] known [to the State of
California] to cause [cancer and] birth defects or other reproductive harm.

15 (The text in brackets in the warnings above is optional, except that the term “cancer” must be
16 included if the maximum daily dose recommended on the label contains more than 15
17 micrograms of lead after subtracting out the amount of lead deemed “naturally occurring” for
18 each ingredient listed in Table 2.4 below that is present in the Covered Product.)

19 (a) For sales in retail stores, the Warning may be provided by either of the following
20 methods, (1) Identifying Signs and Designated Symbol in Retail Stores, or (2) Other Clear and
21 Reasonable Warnings in Retail Stores, below:

22 (1) *Identifying Signs and Designated Symbol in Retail Stores.* In retail stores, the
23 Warning may be provided through the use of a system that combines both a designated symbol
24 and an identifying sign that explains the meaning of the designated symbol. The designated
25 symbol (“Symbol”) shall be the Symbol shown on Exhibit C and shall appear as shown on
26 Exhibit C, with black “Prop 65” and “!” text, black border, and yellow background, wherever it is
27 displayed.

28 (A) *Covered Products Displayed in Retail Stores: Signs.*

1 (i) Form of Sign. A Sign shall be rectangular and at least 36 square
2 inches in size, with the word "WARNING" centered one-half of an inch from the top of the sign
3 all in one-half inch capital letters. For the body of the warning message, left and right margins of
4 at least one-half of an inch, and a bottom margin of at least one-half inch shall be observed. The
5 Symbol must be at least one inch high. Larger signs shall bear substantially the same proportions
6 of type size and spacing to sign dimension as a sign that is 36 square inches in size. Unless
7 modified by agreement of the parties, the sign shall contain the following text (text in brackets is
8 optional, except as described above):

9
10 WARNING:
11 CALIFORNIA PROPOSITION 65
12 Products with the symbol
13 *[Shown on Exhibit C]*
14 contain [lead,] [a] chemical[s] known to
15 the State of California to
16 cause [cancer and] birth defects
17 or other reproductive harm

18 (ii) Placement of Sign. Signs shall be placed in each California
19 establishment in which any of Defendant's Covered Products that requires a warning are sold.
20 Where a retail establishment sells only products that do not require a warning, it is not required to
21 post the Sign. Signs shall not be covered or obscured, and shall be placed and displayed in a
22 manner rendering them likely to be read and understood by an ordinary individual prior to
23 purchase. At least one Sign shall be posted in each aisle or on each shelf or display where the
24 Covered Products for which the warning is being provided are offered or displayed for sale,
25 unless the retail establishment has less than 7,500 square feet of retail space and no more than two
26 cash registers, or the retail establishment's principal purpose is to sell dietary supplements, in
27 which case the Sign may be posted at each cash register. Additional signs shall be posted as are
28 necessary to assure that any potential purchaser of Covered Products would be reasonably likely
to see a Sign prior to purchase.

(iii) Defendant shall provide an exemplar Sign to the central purchasing
office for all distributors and retail establishments with whom Defendant transacts business for
sale of the Covered Products in California that require a warning. Defendant shall send to each

1 such entity instructions, substantially similar to the sample letter attached as Exhibit D, to post the
2 Sign (in the case of a retailer) or request that retailers post the Sign (in the case of a distributor) in
3 accordance with this Consent Judgment, and shall request a response to Defendant with a written
4 acknowledgment that the Sign will be posted (in the case of a retailer), or that the distributor shall
5 request retailers to post the Sign, within 30 days of receipt of the instructions. Defendant shall
6 send a follow-up communication, substantially similar to the sample letter attached as Exhibit E,
7 to entities who were sent the original instructions and who did not timely send an
8 acknowledgment. Defendant shall maintain files demonstrating compliance with this provision,
9 including the communications sent and receipts of any acknowledgments from retailers and
10 distributors, which shall be provided to the Attorney General on written request. If Defendant
11 learns that a retailer, distributor, or other person has failed to, or failed to request another entity
12 to, post or maintain the Sign in accordance with subsection (ii) above, Defendant shall stop
13 providing Covered Products to such retailer, distributor, or other person until it verifies that
14 compliance with the terms of subsection (ii) above is achieved.

15 (iv) If Defendant complies with the terms of subsection (iii) above, it
16 shall not be found to have violated this Consent Judgment where a retail store, distributor, or
17 other person fails to, or fails to request another entity to, post or maintain the Sign in accordance
18 with this Consent Judgment.

19 (B) *Covered Products Sold in Retail Stores: Symbol.* The Symbol shall be
20 prominently displayed with such conspicuousness, as compared with other words, statements,
21 designs, or devices used at the point the Covered Product is offered for sale, as to render the
22 Symbol likely to be seen by an ordinary individual prior to purchase. The Symbol shall be
23 displayed on or adjacent to the Covered Products in any one or more of the following locations:

24 (i) The Symbol may be permanently affixed to or prominently printed on
25 any placards, signs, or shelf stickers adjacent to the Covered Product that identify the name or
26 price of the Covered Product displayed, in which case the Symbol shall be at least as tall as the
27 largest letter or numeral in the name or price of the Covered Product; or
28

1 (ii) The Symbol may be permanently affixed to or printed on (at the point
2 of manufacture, prior to shipment to California, or prior to distribution within California) the
3 outside packaging or container of each unit of the Covered Product, in which case the Symbol
4 must be large enough that the text "Prop 65" and "!" are in a type size no smaller than 6 point,
5 and in no case shall the Symbol be less than one-quarter inch (0.25 inch) high; or

6 (iii) The Symbol may be permanently affixed to or printed on a "hang
7 tag" secured to the container of each unit of the Covered Product, in which case the Symbol shall
8 be at least one-half inch tall.

9 (2) *Other Clear and Reasonable Warnings in Retail Stores.* In stores not using
10 the Identifying Signs and Designated Symbol in Retail Stores system described above in Section
11 2.2(a)(1), the Warning shall be permanently affixed to or printed on (at the point of manufacture,
12 prior to shipment to California, or prior to distribution within California) the outside packaging or
13 container of each unit of the Covered Product, or on a "hang tag" secured to the container of each
14 unit of the Covered Product. The Warning shall be displayed with such conspicuousness, as
15 compared with other words, statements, designs, or devices on the packaging or labeling, as to
16 render it likely to be read and understood by an ordinary individual prior to purchase. If the
17 Warning is displayed on the product container or labeling, the Warning shall be at least the same
18 size as the largest of any other health or safety warnings on the product container or labeling, and
19 the word "warning" shall be in all capital letters and in bold print. If printed on the labeling itself,
20 the Warning shall be contained in the same section of the labeling that states other safety
21 warnings concerning the use of the product.

22 (b) For Covered Products sold to California consumers through the Internet, the Warning
23 shall be prominently displayed on each webpage describing the ingredients or attributes of the
24 Covered Product, or the Warning may be provided at the time the customer enters a California
25 address for the shipping address. For sales of Covered Products to California consumers through
26 websites of third parties not affiliated with Defendant, where the Covered Product may be
27 returned by the consumer for a full refund with no extra charge or shipping or handling fee, the
28 Warning may alternatively be displayed on the outside packaging or container of each unit of the

1 Covered Product or on an invoice that accompanies the shipment of the Covered Product. In all
2 circumstances, the Warning shall be displayed with such conspicuousness, as compared with
3 other words, statements, designs, or devices on the webpages, packaging, container, or invoice, as
4 to render it likely to be read and understood by an ordinary individual prior to use. The Warning
5 shall be at least the same size as the largest of any other health or safety warnings on the
6 webpage, invoice, or product packaging, and the word "warning" shall be in all capital letters and
7 in bold print. A Warning printed on an invoice must be in a type size at be at least as tall as the
8 largest letter or numeral in the name or price of the Covered Product printed on the invoice. The
9 requirements of this paragraph may be modified by written agreement between Defendant and the
10 People.

11 (c) For Covered Products sold to California consumers through a printed catalog, the
12 Warning shall be prominently displayed on a catalog page describing the ingredients or attributes
13 of the Covered Product. Where the Covered Product may be returned by the consumer for a full
14 refund with no extra charge or shipping or handling fee, the Warning may alternatively be
15 displayed on the outside packaging or container of each unit of the Covered Product or on an
16 invoice that accompanies the shipment of the Covered Product. The Warning shall be displayed
17 with such conspicuousness, as compared with other words, statements, designs, or devices on the
18 catalog page, invoice, or product packaging, as to render it likely to be read and understood by an
19 ordinary individual prior to the time of use. The Warning shall be at least the same size as the
20 largest of any other health or safety warnings on the catalog page, invoice, or product packaging,
21 and the word "warning" shall be in all capital letters and in bold print. A Warning printed on an
22 invoice must be in a type size at be at least as tall as the largest letter or numeral in the name or
23 price of the Covered Product printed on the invoice.

24 (d) For sales and distribution of Covered Products not described in subsections (a), (b),
25 and (c), above, the Warning shall be provided at the point of sale or distribution prior to purchase
26 by the consumer. The Warning shall be displayed with such conspicuousness, as compared with
27 other words, statements, designs, or devices, as to render it likely to be read and understood by an
28 ordinary individual prior to purchase. The Warning shall be at least the same size as the largest of

1 any other health or safety warnings presented, and the word “warning” shall be in all capital
2 letters and in bold print.

3 **2.3.** The warning requirements set forth herein are imposed pursuant to the terms of
4 this Consent Judgment, and are recognized by the parties as not being the exclusive methods of
5 providing a warning for the Covered Products under Proposition 65 and its implementing
6 regulations.

7 **2.4. Calculation of Lead Content**

8 For the purposes of Section 2.1 of this Consent Judgment, the amount of lead deemed
9 “naturally occurring” in a Covered Product is the sum of the amounts of “naturally occurring”
10 lead supplied by the quantity of each ingredient listed in Table 2.4 that is present in the maximum
11 daily dose recommended on the label of Covered Product. For each ingredient, the amount of
12 “naturally occurring” lead is listed in Table 2.4 in micrograms (“mcg”) of “naturally occurring”
13 lead per gram of the ingredient contained in the maximum daily dose recommended on the label
14 of Covered Product. If the amount of elemental calcium contained in the maximum daily dose
15 recommended on the label of a Covered Product exceeds 1500 milligrams, then the amount of
16 “naturally occurring” lead supplied by each ingredient listed in Table 2.4 is limited to that amount
17 of lead supplied by the quantity of the ingredient that would be contained in that fraction of the
18 maximum daily dose of the Covered Product that would supply only 1500 milligrams of
19 elemental calcium.

TABLE 2.4

<u>INGREDIENT</u>	<u>NATURALLY OCCURRING AMOUNT OF LEAD</u>
Calcium (elemental)	0.8 mcg Pb per gram of elemental Calcium
Ferrous Fumarate	0.4 mcg Pb per gram of Ferrous Fumarate
Zinc Oxide	8.0 mcg Pb per gram of Zinc Oxide
Magnesium Oxide	0.4 mcg Pb per gram of Magnesium Oxide
Magnesium Carbonate	0.332 mcg Pb per gram of Magnesium Carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of Magnesium Hydroxide
Zinc Gluconate	0.8 mcg Pb per gram of Zinc Gluconate
Potassium Chloride	1.1 mcg Pb per gram of Potassium Chloride

2.5. Modification of "Naturally Occurring" Allowance

(a) In the event that the Attorney General determines that the naturally occurring levels set forth in Table 2.4 of Section 2.4 above are higher than the "lowest level currently feasible," as stated in California Code of Regulations, title 27, section 25501, the Attorney General shall have the right to seek a modification of the Consent Judgment to reflect the alleged "lowest level currently feasible" of naturally occurring lead in the specified ingredients. Prior to seeking such modification, the Attorney General shall provide written notice to Defendant that the Attorney General intends to seek the modification. The parties shall have ninety (90) days in which to confer with the Attorney General concerning the modification. If Defendant and the Attorney General are unable to agree on a modification to the Consent Judgment, the Attorney General may file a motion with the Court seeking a modification of the Consent Judgment. In any motion by the Attorney General seeking such a modification, the burden of producing evidence shall be initially upon the Attorney General to demonstrate a prima facie case that the modification sought by the Attorney General is the "lowest level currently feasible." A Defendant who does not agree to such modification retains the ultimate burden of proving that the modification sought by the Attorney General is lower than the "lowest level currently feasible." The parties hereby agree that the Consent Judgment should be modified to reflect any agreement

1 of the parties or any determination by the Court concerning what is the "lowest level currently
2 feasible" for lead in the specified ingredients.

3 (b) In the event that Defendant determines that the naturally occurring levels set forth in
4 Table 2.4 of Section 2.4 above are lower than the "lowest level currently feasible," as stated in
5 California Code of Regulations, title 27, section 25501, Defendant shall have the right to seek
6 modification of the Consent Judgment to reflect the alleged "lowest level currently feasible" of
7 naturally occurring lead in the specified ingredients. Prior to seeking such modification,
8 Defendant shall provide written notice to the Attorney General that it intends to seek the
9 modification. The parties shall have ninety (90) days in which to confer concerning the
10 modification. If the parties are unable to agree on a modification to the Consent Judgment,
11 Defendant may file a motion with the Court seeking a modification of the Consent Judgment. In
12 any motion by Defendant seeking such modification, the burden of producing evidence and of
13 proof shall be on Defendant to prove that the modification sought by the Defendant is the "lowest
14 level currently feasible." The parties hereby agree that the Consent Judgment should be modified
15 to reflect any agreement of the parties or any determination by the Court concerning what is the
16 "lowest level currently feasible" for lead in the specified ingredients.

17 (c) The term "feasible" as used in Section 2.5 includes, but is not limited to, a
18 consideration of the following factors: availability and reliability of a supply of low-lead
19 ingredients that meet the requirements set forth in Section 2.4; cost of low-lead ingredients and
20 resulting increase in manufacturers' prices resulting from the use of the low-lead ingredients;
21 performance characteristics of low-lead ingredients and of the resulting Covered Products,
22 including, but not limited to, formulation, performance, safety, efficacy, and stability. Nothing in
23 this Consent Judgment shall be interpreted to require Defendant to use any ingredient in a
24 Covered Product that would render the Covered Product unlawful under state or federal law as
25 measured by existing and/or future applicable California and federal food and drug laws and
26 regulations.

1 **2.6. Testing**

2 (a) Once a year, on or before the anniversary of the entry of the Consent Judgment (or, in
3 the case of a New Product deemed to be a Covered Product pursuant to Section 9, prior to the
4 time it is Distributed into California or directly sold to a consumer in California), Defendant shall
5 test for lead content, or require its supplier to test for lead content, randomly-selected samples of
6 each Covered Product (in the form intended for sale to the end-user) for which a batch or lot was
7 manufactured in the preceding twelve months. This testing requirement does not apply to a
8 Covered Product for which Defendant has provided the warning specified in Section 2.2 since the
9 Effective Date or during the preceding twelve months, whichever is the more recent period, nor
10 does it apply to a Covered Product during any time period in which Defendant has provided the
11 warning specified in Section 2.2. The method of selecting samples for testing must comply with
12 the regulations of the Food and Drug Administration as set forth in 21 Code of Federal
13 Regulations part 111, subpart E, including part 111.80(c) (2011). This testing requirement will
14 no longer apply to Covered Products identified on Exhibit A or to New Products if those products
15 are reformulated so that they no longer meet the definition of Covered Products contained in
16 Section 1.5.

17 (b) Testing for lead shall be performed using a laboratory method that complies with the
18 performance and quality control factors appropriate for the method used (including limit of
19 detection, limit of quantification, accuracy, and precision) and that meets either of the following
20 sets of criteria:

21 (1) Closed-vessel, microwave-assisted acid digestion employing high-purity
22 reagents, followed by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a
23 limit of quantification of ≤ 0.060 mg/kg, or any other testing method previously agreed upon in
24 writing by the parties; or

25 (2) Heat-assisted acid digestion employing high-purity reagents, followed by
26 Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of quantification of
27 ≤ 0.060 mg/kg.
28

1 Defendant acknowledges that the method specified in (b)(2) may be a less accurate
2 method of determining the lead content of its products than (b)(1) and may tend to underreport
3 the actual amount of lead present in the product. If Defendant elects to use method (b)(2) for
4 testing any Covered Product, and the results of the test report an amount of lead that would lead
5 to an exposure of more than 0.35 micrograms of lead per day, based on the maximum daily dose
6 recommended on the label of the Covered Product, then prior to distributing into California or
7 directly selling in California that Covered Product Defendant shall re-test the product using the
8 method outlined in (b)(1) and shall disregard the results of the first test.

9 (c) Defendant shall provide any test results and documentation within fifteen (15)
10 working days of any written request from the People, and shall retain all test results and
11 documentation for a period of four (4) years from the date of the test. All test results for lead
12 content, once provided to the Attorney General, shall be public documents, but Defendant may
13 redact any test reports to remove results of tests for chemicals other than lead. Absent good
14 cause, the People shall not request test data from Defendant pursuant to this Section 2.6 more
15 frequently than twice a year.

16 (d) If tests conducted pursuant to subsection (b) demonstrate that no warning is required
17 for a Covered Product during each of four (4) consecutive years, then the testing requirements of
18 this Section 2.6 are suspended as to that Covered Product until there is a material change in the
19 product's formula, manufacturing process, ingredients, or recommended dosage, at which time
20 the testing requirements applicable to New Products in subsection (a) shall apply; however, such
21 suspension of the testing requirements does not suspend or waive any other requirement of this
22 Consent Judgment, including any obligation to provide a warning pursuant to Section 2.1.

23 (e) Nothing in this Consent Judgment shall limit Defendant's ability to conduct, or
24 require that others conduct, additional testing of the Covered Products, including the raw
25 materials used in their manufacture.

26 (f) This Consent Judgment, including the testing and sampling methodology set forth in
27 this Section, is the product of negotiation and compromise, and is accepted by the parties for
28 purposes of settling, compromising, and resolving issues disputed in this action, including future

1 compliance by Defendant with Section 2 of this Consent Judgment, and shall not be used for any
2 other purpose, or in any other matter and, except for the purpose of determining future
3 compliance with this Consent Judgment, shall not constitute an adoption or employment of a
4 method of analysis for a listed chemical in a specific medium as set forth in California Code of
5 Regulations, title 27, section 25900, subdivision (g).

6 **2.7.** Nothing in the Consent Judgment shall preclude Defendant from seeking to modify
7 this Consent Judgment pursuant to Section 8.1 to establish that any ingredient or ingredients not
8 set forth in Table 2.4 of Section 2.4 of this Consent Judgment contain(s) lead that is naturally
9 occurring at the lowest level currently feasible as stated in California Code of Regulations, title
10 27, section 25501.

11 **3. SETTLEMENT PAYMENTS**

12 **3.1 Settlement Amount and Allocation**

13 The total settlement amount to be paid by Defendant shall be \$2,900.00, allocated more
14 specifically as follows:

15 (1) Within 30 days of the Effective Date, Defendant shall pay a civil penalty of nine
16 hundred ninety-two dollars (\$992.00) pursuant to California Health & Safety Code section
17 25249.7, subdivision (b). This payment shall be divided in accordance with Health & Safety
18 Code section 25249.12, subdivisions (c) and (d), with \$744.00 (75 percent of the penalty) to be
19 sent to the Office of Environmental Health Hazard Assessment ("OEHHA" to be deposited in the
20 Safe Drinking Water and Toxic Enforcement Fund, and \$248.00 (25 percent of the penalty) to be
21 paid to the Office of the Attorney General.

22 (a) The 75-percent share of the penalty to be deposited in the Safe Drinking Water
23 and Toxic Enforcement Fund shall be paid by check payable to OEHHA, with the check to bear
24 the notation "Proposition 65 – AG Matter ID OK2008900614."

25 (b) The 25-percent share of the penalty to be paid to the Office of the Attorney
26 General shall be paid by check payable to the "California Department of Justice – Litigation
27 Deposit Fund." The check shall bear on its face "Proposition 65 Recoveries Fund" and the
28 Attorney General's internal reference number for this matter (OK2008900614). The money paid

1 to the Attorney General's Office pursuant to this paragraph shall be administered by the
2 California Department of Justice and shall be used by the Environment Section of the Public
3 Rights Division of the Attorney General's Office, until all funds are exhausted, for any of the
4 following purposes: (1) implementation of the Attorney General's authority to protect the
5 environment and natural resources of the State pursuant to Government Code section 12600 et
6 seq. and as Chief Law Officer of the State of California pursuant to Article V, section 13 of the
7 California Constitution; (2) enforcement of laws related to environmental protection, including,
8 but not limited to, Chapters 6.5 and 6.95, Division 20, of the California Health & Safety Code; (3)
9 enforcement of the Unfair Competition Law, Business & Professions Code section 17200 et seq.,
10 as it relates to protection of the environment and natural resources of the State of California; and
11 (4) other environmental actions that benefit the State and its citizens as determined by the
12 Attorney General. Such funding may be used for the costs of the Attorney General's
13 investigation, filing fees and other court costs, payment to expert witnesses and technical
14 consultants, purchase of equipment, laboratory analyses, personnel costs, travel costs, and other
15 costs necessary to pursue environmental actions investigated or initiated by the Attorney General
16 for the benefit of the State of California and its citizens. The payment, and any interest derived
17 therefrom, shall solely and exclusively augment the budget of the Attorney General's Office as it
18 pertains to the Environment Section of the Public Rights Division and in no manner shall
19 supplant or cause any reduction of any portion of the Attorney General's budget.

20 (2) Within 30 days of the Effective Date, Defendant shall pay a civil penalty of four
21 hundred ninety-six dollars (\$496.00) pursuant to Business & Professions Code section 17206 to
22 the Marin County District Attorney's Office, which office shall distribute this amount pursuant to
23 a written agreement of the District Attorney offices in this action.

24 (3) Within 30 days of the Effective Date, Defendant shall pay investigative costs in the
25 amount of seven hundred six dollars (\$706.00) pursuant to Business and Professions Code section
26 17203 to the Marin County District Attorney's Office, which office shall distribute this amount
27 pursuant to a written agreement of the District Attorney offices in this action; with the portion
28

1 provided to the Napa County District Attorney's Office to be deposited into the Napa District
2 Attorney's Environmental Protection Trust Fund.

3 (4) Within 30 days of the Effective Date, Defendant shall pay seven hundred six dollars
4 (\$706.00) to the California Department of Justice as reimbursement for attorneys fees and costs to
5 be used by the Attorney General for the enforcement of Proposition 65 ("Enforcement Fund
6 Payment"). This payment shall be made by check payable to the "California Department of
7 Justice." The check shall bear on its face "Proposition 65 Enforcement Fund" and the Attorney
8 General's internal reference number for this matter (OK2008900614). Funds paid pursuant to
9 this paragraph shall be placed in an interest-bearing Special Deposit Fund established by the
10 Attorney General. These funds, including any interest, shall be used by the Attorney General,
11 until all funds are exhausted, for the costs and expenses associated with the enforcement and
12 implementation of Proposition 65, including investigations, enforcement actions, and other
13 litigation or activities as determined by the Attorney General to be reasonably necessary to carry
14 out his duties and authority under Proposition 65. Such funding may be used for the costs of the
15 Attorney General's investigation, filing fees and other court costs, payment to expert witnesses
16 and technical consultants, purchase of equipment, travel, purchase of written materials, laboratory
17 testing, sample collection, or any other cost associated with the Attorney General's duties or
18 authority under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this
19 paragraph, and any interest derived therefrom, shall solely and exclusively augment the budget of
20 the Attorney General's Office and in no manner shall supplant or cause any reduction of any
21 portion of the Attorney General's budget.

22 **3.2 Delivery**

23 Defendant shall pay the entire settlement amount within thirty (30) days following the
24 Effective Date. The payments required by this Consent Judgment shall be made as follows:

25 (a) The payment required by Section 3.1(1)(a) shall be sent directly to:

26 Senior Accounting Officer – MS 19-B
27 Office of Environmental Health Hazard Assessment
28 P.O. Box 4010
Sacramento, CA 95812-0410

1 (b) All payments required by Sections 3.1(1)(b) and 3.1(4) shall be made through the
2 delivery of separate checks by certified or express mail to the attention of:

3 Laura J. Zuckerman
4 Timothy E. Sullivan
5 Deputy Attorneys General
6 California Department of Justice
7 1515 Clay Street, 20th Floor
8 Oakland, CA 94612

7 A copy of the checks and cover letter shall be sent to

8 Robert Thomas
9 Legal Analyst
10 California Department of Justice
11 1515 Clay St., 20th Floor
12 P.O. Box 70550
13 Oakland, California 94612-0550

12 (c) A single check in the amount of one thousand two hundred two dollars (\$1,202.00),
13 comprising the amounts described above in Sections 3.1(2) and 3.1(3), shall be made payable to
14 "Marin District Attorney Consumer Trust Account" and sent by certified or express mail to the
15 attention of:

16 Andres Perez
17 Deputy District Attorney
18 Marin County District Attorney's Office
19 3501 Civic Center Dr.
20 San Rafael CA 94903

19 4. ENFORCEMENT OF CONSENT JUDGMENT

20 (a) In the event that the People believe that Defendant is in violation of any provision of
21 this Consent Judgment, the People shall provide written notice of such alleged violation to
22 Defendant. The Parties must meet and confer regarding the alleged violation within twenty (20)
23 business days of Defendant's receipt of the notice. After sending such a notice of alleged
24 violation, and notwithstanding the meet-and-confer obligation in the preceding sentence, the
25 People may, by motion or order to show cause before the Superior Court of Alameda County,
26 enforce the terms and conditions contained in this Consent Judgment. In any action brought by
27 the People to enforce this Consent Judgment, the People may seek whatever fines, costs,
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1 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
2 Where said failure to comply constitutes a violation of Proposition 65, unfair competition, as
3 defined by Business and Professions Code section 17200, or a violation of other laws, the People
4 are not limited to enforcement of this Consent Judgment, but may seek in another action whatever
5 fines, costs, penalties, or remedies as are provided by law for failure to comply with Proposition
6 65 or other laws or for engaging in unfair competition. The rights of Defendant to defend itself
7 and its actions in law or equity shall not be abrogated or reduced in any fashion by the terms of
8 this Section 4.

9 (b) If, after the date this Consent Judgment is executed by Defendant, Defendant receives
10 or becomes aware of a notice of alleged violation pursuant to California Health and Safety Code
11 section 25249.7, subdivision (d), alleging that a Covered Product has caused an exposure to lead
12 in violation of section 25249.6, and the Defendant provides evidence to the People, within thirty
13 (30) days of receipt or knowledge of such notice of alleged violation, that either (1) the Covered
14 Product would not have required a warning under the standards set out in Section 2.1 had they
15 then been applicable, or (2) Defendant has discontinued, reformulated, or relabeled the Covered
16 Product such that a warning is no longer required under Section 2.1, then Defendant and the
17 People shall meet and confer respecting such matter within thirty (30) days of the People's receipt
18 of such evidence. As a result of those discussions between the People and Defendant, the People
19 may seek to modify this Consent Judgment to add the Covered Product that is the subject of the
20 notice of alleged violation to the list of Released Products if the Defendant and the People agree
21 on such modification. Otherwise, the People may take such other action as allowed by law, or the
22 People may elect to take no action respecting such Covered Product.

23 **5. COVERED CLAIMS**

24 This Consent Judgment is a full, final, and binding resolution between the People and
25 Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries, sister companies,
26 affiliates, and cooperative members (collectively, the "Covered Entities"), and with the licensors,
27 licensees, retailers, distributors, wholesalers, upstream suppliers, contract manufacturers, agents,
28 representatives of the Covered Entities, and the officers, directors, employees, attorneys, agents,

1 representatives, predecessors, successors, and assigns of any of the above, of any violation of
2 Proposition 65 or its implementing regulations, any acts of unfair competition, as defined by
3 Business and Professions Code sections 17200, or any violation of any other statutory or common
4 law that have been or could have been asserted in the Action for failure to provide clear and
5 reasonable warnings required by Proposition 65 of exposure to lead from use of the Released
6 Products, or any other claim based on the facts or conduct alleged in the Complaint as to such
7 Released Products. Defendant waives any claims against the People based on the filing or
8 prosecution of the Action. Compliance with all of the requirements of Section 2 constitutes
9 compliance with Proposition 65 and Business and Professions Code sections 17200 et seq. with
10 respect to any obligation of Defendant to provide a warning as to the lead content of any Covered
11 Product.

12 **6. COURT APPROVAL**

13 The People shall submit this Consent Judgment to the Court for its approval and entry in
14 the Action.

15 **7. RETENTION OF JURISDICTION**

16 This Court shall retain jurisdiction of this matter to implement the Consent Judgment,
17 including modifications to add products to the list of Released Products, to enforce the Consent
18 Judgment and enable the collection of additional civil penalties and costs, if appropriate, and to
19 enable the People to apply to the Court upon noticed motion for additional civil penalties in the
20 event there are any material misrepresentations in Defendant's February 2, 2012, declaration of
21 Edwin Fitzjarrell, submitted to the People and on which the People relied in executing this
22 Consent Judgment, which motion must be filed within the sooner of three (3) years after entry of
23 judgment or one (1) year after the People discover the material misrepresentation.

24 **8. MODIFICATION**

25 **8.1** This Consent Judgment may be modified from time to time by express written
26 agreement of the parties, with the approval of the Court, or by an order of this Court. Before
27 filing an application with the Court for a modification to this Consent Judgment, the Parties shall
28 meet and confer with each other to determine whether each will consent to the proposed

1 modification. If a proposed modification is agreed upon, then the Parties will present the
2 modification to the Court by means of a stipulated modification to the Consent Judgment.

3 Grounds for considering modification shall include any that are permitted by law, including but
4 not limited to the grounds set forth below.

5 **8.2** If the Attorney General subsequently agrees in a settlement or judicially-entered
6 injunction or consent judgment that vitamin supplements made with the same ingredients as, and
7 having a composition similar to, any of Defendant's Covered Products do not require a warning
8 under Proposition 65, or that a modified warning for such vitamin supplements is appropriate that
9 differs from that imposed in this Consent Judgment, or establishes allowances for naturally-
10 occurring lead in ingredients used in any of Defendant's Covered Products; or a court of
11 competent jurisdiction renders a final judgment in a case brought by the Attorney General that
12 eliminates the warning requirement for vitamin supplements made with the same ingredients as,
13 and having a composition similar to, any of Defendant's Covered Products, or that modifies the
14 warning requirement for such vitamin supplements, either by establishing allowances for
15 naturally-occurring lead or otherwise, then Defendant shall be entitled to seek to modify the terms
16 of this Consent Judgment to make it consistent with the Attorney General agreement or Court
17 judgment described herein. The parties intend that this Consent Judgment may be modified to
18 allow Defendant to take advantage of allowances for naturally-occurring lead in ingredients that
19 are used in any of Defendant's Covered Products that may be established in such Attorney
20 General agreement or Court judgment described herein.

21 **9. NEW PRODUCTS**

22 A "New Product" means either of the following: (1) a product that is intended to
23 substantially replace or be substantially duplicative of a Covered Product identified on Exhibit A
24 hereto and that meets the definition of a Covered Product; or (2) a new product formulation
25 which, had it existed on the date Defendant executed this Consent Judgment, would have met the
26 definition of a Covered Product. Each New Product is deemed also to be a Covered Product.
27 Defendant shall not manufacture for sale in California, Distribute into California, or directly sell
28 to a consumer in California any New Product unless the New Product adheres to the requirements

1 of this Consent Judgment with respect to Covered Products. On or prior to March 1 of each year,
2 Defendant shall send written notice to the Office of the Attorney General listing any New
3 Products it manufactured for sale in California, Distributed into California, or directly sold in
4 California during the previous calendar year for which such notice has not previously been
5 provided. The notice requirement in the preceding sentence terminates five (5) years from the
6 Effective Date of this Consent Judgment. Defendant shall not be deemed in violation of this
7 Consent Judgment if there is an inadvertent error or omission on the annual New Products list
8 submitted to the People, provided that Defendant provides corrected information to the People
9 within fifteen (15) days of discovery of the inadvertent error or omission.

10 **10. SEVERABILITY**

11 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
12 Consent Judgment are held by a Court to be unenforceable, the validity of the enforceable
13 provisions remaining shall not be adversely affected.

14 **11. ENTIRE AGREEMENT**

15 This Consent Judgment contains the sole and entire agreement and understanding of the
16 parties with respect to the entire subject matter hereof, and any and all prior discussions,
17 negotiations, commitments, and understandings related hereto. No representations, oral or
18 otherwise, express or implied, other than those contained herein have been made by any party
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
20 deemed to exist or to bind any of the parties.

21 **12. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California.

24 **13. NOTICES**

25 Unless specified herein, all correspondence and notices required to be provided pursuant
26 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
27 registered or certified mail, return receipt requested; or (ii) overnight courier to any party at the
28 following addresses:

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To Defendant:

Edwin Fitzjarrell, CEO
Metabolic Maintenance Products, Inc.
P.O. Box 940
Sisters, OR 97759

To the Office of the Attorney General:

Laura J. Zuckerman, Esq.
Timothy E. Sullivan, Esq.
California Department of Justice
P.O. Box 70550
1515 Clay Street, Suite 2000
Oakland, CA 94612

Any party, from time to time, may specify in writing to the other a change of address to which all notices and other communications shall be sent.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated:

June 19, 2012


JUDGE OF THE SUPERIOR COURT

OK2008900614
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EXHIBIT A: Covered Products

- 1
- 2 5-MTHF 10 mg
- 3 5-MTHF 2.5 mg
- 4 5-MTHF 5 mg
- 5 Anxiety Control
- 6 Basic Maintenance
- 7 Basic Maintenance Plus
- 8 B-Complex
- 9 Brain Recovery
- 10 Cal/Mag 1:1
- 11 Cal/Mag 1:2
- 12 Cal/Mag Powder
- 13 Cal/Mag/Zinc Complex (120 and 240 capsules)
- 14 Cal/Mag/Zinc Complex with Vitamin D (120 and 240 capsules)
- 15 Cal/Mag/Zinc Complex with Vitamin D Plus
- 16 Custom Vitamin/Mineral Base Powder
- 17 FemOne
- 18 InGear
- 19 Little One
- 20 Magnesium Citrate (120 and 240 capsules)
- 21 Magnesium Glycinate
- 22 MetaCalm
- 23 Naturally Clear Oral
- 24 Pediatric Custom Vitamin Base Powder
- 25 Potassium/Magnesium Citrate
- 26 Rebuild Plus
- 27 Spaz-Out
- 28 The Big One Plus

1 The Big One with Iron

2 The Big One without Iron

3 VitalEyes Complete

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EXHIBIT B: Released Products

Women's Maintenance AM/PM

Women's Maintenance AM/PM without iron

EXHIBIT C: Designated Symbol



1 **EXHIBIT D: Letter to Retailers and Distributors**

2 (For use if Defendant provides sign and symbol warnings pursuant to Section 2.2(a))

3 **THIS COMMUNICATION APPLIES ONLY TO**
4 **RETAIL LOCATIONS IN CALIFORNIA**

5 [Defendant] has entered into a consent judgment with the Attorney General for the State
6 of California regarding the presence of lead in specified dietary supplements sold in California.

7 Under the terms of this consent judgment, [Defendant] is providing the enclosed sign
8 warnings to you so that they can be posted in retail stores selling any of the specified dietary
supplements identified below in California.

9 If you are a retailer, we request that you post copies of these signs in or on any shelf(ves),
10 displays, or aisle(s) where the identified products are sold. If you are a distributor, we request
11 that you provide these signs to all retailers to whom you distribute the identified products and
12 instruct them to post copies of these signs in or on any shelf(ves), displays, or aisle(s) where the
13 identified products are sold. Alternatively, if any store has less than 7,500 square feet of retail
14 space and no more than two cash registers, or the store's principal purpose is to sell dietary
supplements, the sign may be posted at each cash register. The signs may not be covered or
obscured, and should be placed and displayed in such a way that they are likely to be read and
understood by customers.

15 Please sign and return the written acknowledgment below within 30 days of receiving this
16 letter to acknowledge that you have received the signs and that they will be posted in accordance
with these specifications until you receive written instruction from [Defendant] to the contrary.

17 Thank you for your cooperation. If you need more signs or have any questions, such as
18 the appropriate sign locations for your specific retail store(s), please contact [Contact
Information]

19 Acknowledged by:

20 _____ (Signature)

21 _____ (Print Name)

22 _____ (Company/Store Location)

23 _____ (Date)

24 List of Products

1
2 **EXHIBIT E: Follow-Up Letter to Retailers and Distributors**

3 (For use if Defendant provides sign and symbol warnings pursuant to Section 2.2(a))

4 **THIS COMMUNICATION APPLIES ONLY TO**
5 **RETAIL LOCATIONS IN CALIFORNIA**

6 On [Date], [Defendant] sent you a letter enclosing sign warnings for posting in your stores
7 in California, or stores in California to which you distribute its dietary supplements, pursuant to a
8 consent judgment entered into between [Defendant] and the Attorney General for the State of
California regarding the presence of lead in specified dietary supplements sold in California.

9 Copies of these signs are to be posted in or on any shelf(ves), displays, or aisle(s) where
10 any of the specified dietary supplements identified below are sold in your stores in California or
stores in California to which you distribute these supplements. Alternatively, if any store has less
11 than 7,500 square feet of retail space and no more than two cash registers, or the store's principal
purpose is to sell dietary supplements, the sign may be posted at each cash register. The signs
12 may not be covered or obscured, and should be placed and displayed in such a way that they are
likely to be read and understood by customers.

13
14 We have not received your written acknowledgment that you have received the signs and
that your stores will post these signs, or, if you are a distributor, that you will provide the signs
15 and instructions to retailers to whom you distribute the identified products. Please sign and return
the written acknowledgement below as soon as possible to acknowledge that you have received
16 the signs and that they will be posted or provided in accordance with these specifications until
you receive written instruction from [Defendant] to the contrary.

17
18 Thank you for your cooperation. If you need more signs or have any questions, such as
the appropriate sign locations for specific retail stores, please contact [Contact Information]

19 Acknowledged by:

20 _____ (Signature)

21 _____ (Print Name)

22 _____ (Company/Store Location)

23 _____ (Date)

24 List of Products