



FILE
San Francisco County Superior

FEB 18 2014

CLERK OF THE COURT

BY: Janessa [Signature]
Deputy Clerk

1 Laura J. Baughman (SBN 263944)
2 Thomas M. Sims (SBN 264174)
3 BARON & BUDD, P.C.
4 3102 Oak Lawn Avenue, Suite 1100
5 Dallas, TX 75219
6 Tel: (214) 521-3605
7 Fax: (214) 520-1181
8 lbaughman@baronbudd.com
9 tsims@baronbudd.com

6 April Strauss (SBN 163327)
7 LAW OFFICE OF APRIL STRAUSS
8 2500 Hospital Drive, Suite 3B
9 Mountain View, CA 94040
10 Tel: (650) 281-7081
11 astrauss@sfaclp.com

10 James R. Wheaton (SBN 115230)
11 ENVIRONMENTAL LAW FOUNDATION
12 1736 Franklin Street, 9th Floor
13 Oakland, CA 94612
14 Tel: (510) 208-4555
15 Fax: (510) 208-4562
16 wheaton@envirolaw.org
17 Attorneys for Plaintiff
18 ENVIRONMENTAL LAW FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

17 ENVIRONMENTAL LAW FOUNDATION,
18 on behalf of the General Public,
19 Plaintiff,
20 vs.
21 ABBOTT LABORATORIES, et al.
22 Defendants.

Case No. CGC-10-503002
Complaints Filed: August 26, 2010
and December 17, 2010

**[PROPOSED] CONSENT
JUDGMENT AS TO CERTAIN
DEFENDANTS; ORDER**

22 ENVIRONMENTAL LAW FOUNDATION,
23 on behalf of the General Public,
24 Plaintiff,
25 vs.
26 CHAMPION NUTRITION, et al.
27 Defendants.

1 **I. INTRODUCTION**

2 WHEREAS, Plaintiff, the Environmental Law Foundation (“ELF”) seeks to protect the
3 general public of the State of California from exposure to lead and other toxic substances.

4 WHEREAS, on August 26, 2010, ELF individually and on behalf of the public interest,
5 filed a complaint for injunctive relief and civil penalties in San Francisco County Superior
6 Court (“Court”) in an action entitled *Environmental Law Foundation v. Abbott Laboratories, et*
7 *al.*, Case No. CGC-10-503002.

8 WHEREAS, on November 12, 2010, ELF individually and on behalf of the public
9 interest filed a complaint for injunctive relief and civil penalties in San Francisco Superior
10 Court in an action entitled *Environmental Law Foundation v. Champion Nutrition, Inc., et al.*,
11 Case No. CGC-10-505382 and on December 17, 2010, ELF filed a First Amended Complaint in
12 such action.

13 WHEREAS, on April 13, 2011, the two above-referenced cases were consolidated for all
14 purposes, including trial, and papers in both cases were thereafter filed under the common Case
15 No. CGC-10-503002 (the operative complaints in the two above-referenced consolidated cases
16 are collectively referred to herein as the “Complaint.”)

17 WHEREAS, Defendants Abbott Laboratories; Biochem, a brand of Country Life, LLC;
18 Bioengineered Supplements & Nutrition, Inc.; Dymatize Enterprises, Inc.; Heathwatchers,
19 (DE), Inc.; Champion Nutrition, Inc.; Chemisource, Inc.; ISS Research, LLC, doing business as
20 and sued as Integrated Sports Science; IdeaSphere, Inc., operating as ISI Brands, Inc.; Natural
21 Organics Laboratories, Inc. (sued as Natural Organics Laboratories); The Isopure Company,
22 LLC; Vital Pharmaceuticals, Inc.; and Labrada Bodybuilding Nutrition, Inc. doing business as
23 and also sued as Metabolic Response Modifiers (MRM) (hereinafter, collectively, “Settling
24 Defendants”) manufacture, package, distribute, market, and/or sell protein supplement products
25 (“Protein Supplement Products” as defined below) to persons in the State of California and are
26 defendants named in the consolidated complaints identified above.

27 WHEREAS, analysis of this general category of products, including but not limited to
28 these Protein Supplement Products, using inductively coupled plasma mass spectrometry

1 reveals that there can be detectable lead in some production lots of such products, there can be
2 variations in lead concentrations within a single lot of any particular product, there can be
3 variation among different lots of the same product and, finally, there can be variation among
4 protein supplement products made by the same and by different Defendants.

5 WHEREAS, analysis of the general category of products, including but not limited to
6 the subject Protein Supplement Products, also reveals that there can be variations in lead
7 concentrations from flavor to flavor within a single protein supplement product line.

8 WHEREAS, even with use of good manufacturing practices, protein supplement
9 products can still have detectable concentrations of lead.

10 WHEREAS, ELF and Settling Defendants dispute how exposure to the Protein
11 Supplement Products is to be calculated, including the amount of consumption per eating
12 occasion, whether the frequency of consumption should be considered, and the frequency of
13 consumption by the average users of the Protein Supplement Products.

14 WHEREAS, Settling Defendants contend that the lead, if any is detectable, contained in
15 the Protein Supplement Products is “naturally occurring” within the meaning of California Code
16 of Regulations, Title 27, Section 25501.

17 WHEREAS, ELF disputes that contention, contending that the lead contained in these
18 Protein Supplement Products is not naturally occurring for purposes of Proposition 65.

19 WHEREAS, ELF and Settling Defendants recognize and acknowledge that proving or
20 disproving that any particular quantity of lead that may be contained in the Protein Supplement
21 Products is naturally occurring would be extremely expensive and time-consuming, requiring
22 the expenditure of resources out of proportion with any benefits to be derived from that process.

23 WHEREAS, the Consent Judgment in Edgerton v. Conopco (dba Slim Fast Foods Co.),
24 Atkins Nutritionals, Inc., Metabolife International, Kashi Company, and Rexall Sundown, Los
25 Angeles Superior Court Case No. BC26906 (dated 12/19/03) allows, inter alia, similar protein
26 supplement products to be sold in California without a warning, regardless of the concentration
27 of lead in those products, provided that each covered defendant uses its “Best
28 Practices” in manufacturing its products, and keeps the lead levels in the water at its

1 manufacturing facilities under ten (10) parts per billion (“ppb”).

2 WHEREAS, the Consent Judgment in *As You Sow v. Nature’s Way Products Inc.*, San
3 Francisco Superior Court Case No. CGC-03-422848 (filed 5/24/05) allows, *inter alia*, similar
4 protein supplement products containing a concentration of lead in the products of up to four (4)
5 micrograms per day, assuming the product is used or consumed according to the defendant’s
6 consumer use instructions, to be sold in California without a warning, provided that each
7 covered defendant uses Good Manufacturing Practices, uses ingredients grown using Good
8 Agricultural Practices when possible, and uses Quality Control measures to reduce
9 contaminants to the “lowest level currently feasible,” as that phrase is defined by
10 California Code of Regulations, Title 27, Section 25501(a)(4).

11 WHEREAS, the Consent Judgment in *As You Sow v. Irwin Naturals, et al.*, San
12 Francisco Superior Court Case No. 429279 (filed 6/30/05) allows, *inter alia*, similar supplement
13 products containing a concentration of lead in the products of up to four (4) micrograms per day,
14 assuming the product is used or consumed according to the defendant’s consumer use
15 instructions, to be sold in California without a warning, provided that each covered defendant
16 use Good Manufacturing Practices, use ingredients grown using Good Agricultural Practices
17 when possible, and use Quality Control measures to reduce contaminants to the “lowest
18 level currently feasible,” as that phrase is defined by California Code of Regulations, Title 27,
19 Section 25501(a)(4).

20 WHEREAS, the Consent Judgment in *As You Sow v. Threshold Enterprises, Ltd. et al.*,
21 San Francisco Superior Court Case No. 422847 (filed 9/8/05) allows, *inter alia*, similar
22 supplement products containing a concentration of lead in the products of up to four (4)
23 micrograms per day, assuming the product is used or consumed according to the defendant’s
24 consumer use instructions, to be sold in California without a warning, provided that each
25 covered defendant use Good Manufacturing Practices, use ingredients grown using Good
26 Agricultural Practices when possible, and use Quality Control measures to reduce
27 contaminants to the “lowest level currently feasible,” as that phrase is defined by
28 California Code of Regulations, Title 27, Section 25501(a)(4).

1 WHEREAS, the Consent Judgment in *As You Sow v. Botanical Laboratories, Inc. et al.*,
2 San Francisco Superior Court Case No. CGC-04-429563 (filed 5/23/05) allows, *inter alia*,
3 similar supplement products containing a concentration of lead in the products of up to four (4)
4 micrograms per day, assuming the product is used or consumed according to the defendant's
5 consumer use instructions, to be sold in California without a warning, provided that each
6 covered defendant use Good Manufacturing Practices, use ingredients grown using Good
7 Agricultural Practices when possible, and use Quality Control measures to reduce
8 contaminants to the "lowest level currently feasible," as that phrase is defined by California
9 Code of Regulations, Title 27, Section 25501(a)(4).

10 WHEREAS, in the case styled *Nasseri v. CytoSport, Inc.*, Los Angeles Superior Court
11 Case No. BC 439181, as of November 2012 the parties thereto had negotiated Proposition 65
12 warning trigger levels for lead in products which are competitor products to many Protein
13 Supplement Products and those warning trigger levels exceed the warning trigger levels herein,
14 and Settling Defendants contend that they should have the benefit of such higher warning
15 trigger levels if the Los Angeles Superior Court approves the pending motion to approve the
16 settlement.

17 WHEREAS Plaintiffs do not agree that Settling Defendants should be afforded the same
18 Proposition 65 warning trigger levels for lead which are set forth in the pending *Nasseri v.*
19 *CytoSport* action and further believe the lead levels herein should instead be used in the *Nasseri*
20 *v. CytoSport* action.

21 WHEREAS, Settling Defendants contend that they should be provided a naturally
22 occurring allowance of up to one (1) part per million (1000 ppb) of lead for any cocoa powder
23 found in Products, pursuant to the letter dated September 28, 2001 from the California Office of
24 the Attorney General to Roger Lane Carrick and Michele Corash.

25 WHEREAS, ELF disputes that contention, contending that the position reflected in the
26 letter dated September 28, 2001 no longer represents the current state of scientific
27 understanding regarding the origins of lead in chocolate.

28 WHEREAS, Settling Defendants contend that they should be provided a naturally

1 occurring allowance for lead that may be present in calcium and other ingredients encompassed
2 by the Consent Judgment in *People v. Warner-Lambert Co. et al.*, San Francisco Superior Court
3 Case No. 984503 (filed 11/13/1998 and modified in April 2011), which allows, *inter alia*, a
4 naturally occurring allowance of 0.8 micrograms of lead per 1000 milligrams of calcium, and
5 naturally occurring allowances of 0.4 mcg/g for ferrous fumarate, 8.0 mcg/g for zinc oxide, 0.4
6 mcg/g for magnesium oxide, 0.332 mcg/g for magnesium carbonate, 0.4 mcg/g magnesium
7 hydroxide, 0.8 mcg/g zinc gluconate, and 1.1 mcg/g potassium chloride. In 2012 the People
8 afforded the same naturally occurring allowances to dozens of defendants in a series of consent
9 judgments resolving a case styled *People v. 21st Century Healthcare, Inc. et al.*, Alameda
10 Superior Court Case No. RG08426937.

11 WHEREAS, ELF disputes Settling Defendants' contention, as the Consent
12 Judgment in *Warner-Lambert* contains language at paragraphs 1.5 and 9.1 specifically limiting
13 the application of that Consent Judgment to the particular products at issue therein, and noting
14 that nothing in that Consent Judgment shall be construed as an admission of any fact or law,
15 being the product of negotiation and compromise.

16 WHEREAS, Settling Defendants contend that it is unfairly prejudicial to subject
17 different businesses within the same competitive marketplace to different lead warning
18 thresholds pursuant to Proposition 65.

19 WHEREAS, ELF contends that marketplace uniformity does not exempt Settling
20 Defendants from compliance with Proposition 65 warning standards.

21 WHEREAS, all Parties desire to achieve the lowest level of lead in these Protein
22 Supplement Products that is reasonably feasible.

23 NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

24 1.1 In its Complaint, ELF alleges that Defendants manufactured, packaged,
25 distributed, marketed and/or sold protein supplement products for human consumption
26 containing lead in an amount that resulted in an exposure to consumers in violation of the
27 provisions of Health & Safety Code §§ 25249.5 et seq. ("Proposition 65") by knowingly and
28 intentionally exposing persons to a chemical known to the State of California to cause

1 reproductive toxicity and cancer, namely lead, without first providing a clear and reasonable
2 warning to such individuals. The protein supplement products that ELF alleges contain lead,
3 and which are covered by this Consent Judgment, are those described in the Attachment A for
4 each Settling Defendant (the "Protein Supplement Products"). Upon entry of the Consent
5 Judgment, the Complaint shall be deemed amended such that the term "PROTEIN
6 SUPPLEMENTS" in the Complaint is defined, as to each Settling Defendant, as the Protein
7 Supplement Products identified in Attachment A corresponding to each such Settling
8 Defendant.

9 **1.2** For purposes of this Consent Judgment only, ELF and Settling Defendants
10 (hereafter referred to as the "Parties"), stipulate that this Court has jurisdiction over
11 allegations of violations contained in the Complaint and personal jurisdiction over the Settling
12 Defendants as to the acts alleged in the Complaint, that venue is proper in the County of San
13 Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of
14 all claims which could have been raised in the Complaint based on the facts alleged therein. For
15 the sake of clarity, the term "Settling Defendants" shall mean and include those entities set forth
16 in Exhibit A attached hereto for each Settling Defendant.

17 **1.3** Each Settling Defendant denies the allegations set forth in the
18 Complaint.

19 **1.4** For the purpose of avoiding prolonged and costly litigation, the Parties
20 enter into this Consent Judgment as a full settlement of all claims that were raised in
21 the Complaint based on the facts alleged therein, or which could have been raised in
22 the Complaint arising out of the facts alleged therein. By execution of this Consent
23 Judgment, no Settling Defendant admits any violation of Proposition 65 or any other
24 law and specifically denies that it has committed any such violations and maintains that
25 all Protein Supplement Products that it has sold and distributed in California have been
26 and are in compliance with all laws. Nothing in this Consent Judgment shall be
27 construed as an admission by any Settling Defendant of any fact, finding, conclusion,
28

1 issue of law, or violation of law. However, this paragraph shall not diminish or affect
2 the responsibilities and duties of the Parties under this Consent Judgment.

3 **II. MONITORING**

4 **2.1** No later than one hundred and eighty (180) days after entry of this
5 Consent Judgment, each Settling Defendant will test or arrange for the testing for lead of
6 each of its Protein Supplement Products that it intends to distribute or sell in California. In
7 establishing an initial data set for purposes of this Consent Judgment, a Settling Defendant
8 may rely on testing conducted prior to entry of this Consent Judgment if such testing
9 documents lead levels in Protein Supplement Products either already in the stream of
10 commerce, in process, or which are ready for distribution or sale.

11 **2.1.1** A Settling Defendant may use a testing laboratory with
12 Environmental Laboratory Certification from the State of California, Department of
13 Health Services, Environmental Laboratory Accreditation Program; NSF
14 International; American Association for Laboratory Accreditation for Chemical Testing;
15 International Standards Organization/IEC via ANSI-ASQ; or an in-house laboratory or
16 other facility experienced in testing for lead levels in foods that complies with the
17 Production and Process Control System: Requirements for Laboratory Operations set
18 forth in 21 C.F.R. Part 111, Subpart J, including but not limited to the requirements
19 for written procedures, requirements for laboratory control processes, requirements
20 for laboratory methods for testing and examination, record retention policies, and
21 other laboratory requirements.

22 **2.1.2.** The lead concentrations must be measured using inductively
23 coupled plasma mass spectrometry ("ICP-MS") utilizing scientifically appropriate
24 adherence to the protocols set forth in EPA Methods 6020, 6020a, isotope
25 dilution. The laboratory must digest at least 0.5grams of each sample, analyze
26 each sample undiluted by ICP-MS, and use an instrument quantitation limit
27 corresponding to less than three (3) micrograms lead (Pb) in the finished product.
28

1 **2.2** To fulfill its monitoring obligation under Section 2.1 and using a testing
2 method described therein, each Defendant must test or cause to be tested three (3)
3 samples of the final product which comprises each Protein Supplement Product, with
4 samples randomly selected from three (3) different lots (or from the maximum number
5 of lots that are available for testing if there are fewer than three (3) lots available). The
6 testing required under this Section 2.2 will be repeated annually for two years
7 following the compilation of the initial data set described in Section 2.1.
8 Notwithstanding any language to the contrary herein, if at any time there is a material change in
9 formula of a Protein Supplement Product that is reasonably likely to affect the lead levels in the
10 product, that product shall be tested pursuant to Sections 2.1 and 2.2 for a minimum of two
11 years. All laboratory test data and certifications (if applicable) must be retained by
12 Settling Defendants for a period of three years from the date of testing. However,
13 Settling Defendants are not required to test any Protein Supplement Products if they are
14 providing a warning for those products that complies with Section 3.2

15 **2.2.1** On and after the Effective Date, any single test result which exceeds 5.75
16 ug/day lead as calculated under this Section 2 shall be deemed an outlier. On and after the first
17 anniversary of the Effective Date, any single test result which exceeds 5.0 ug/day lead as
18 calculated under this Section 2 shall be deemed an outlier. Any outlier result as described in
19 this Section 2.2.1 is referred to hereinafter as an "Outlier."

20 **2.2.2** At a Settling Defendant's option, any single Outlier test result may be
21 subject to validation before it is deemed a final Outlier result for purposes of this Consent
22 Judgment. The validation process shall consist of two steps.

23 **(a)** First, Settling Defendant shall check its equipment, test processes,
24 validation procedures, laboratory contamination, operator error and any other factors which
25 could have produced an erroneous result. If the result is determined erroneous due to testing
26 error or failure to satisfy quality assurance or quality control procedures, the result shall be
27 discarded and not used for any purpose under this Consent Judgment. The Protein Supplement
28 Product shall then be re-tested as if such test were the first test.

1 (b) Second, if a single Outlier test result is obtained and the steps in
2 2.2.2(a) have not invalidated the result, then Settling Defendant may collect up to three (3) more
3 samples from the same lot or batch and have those samples tested in accordance with this
4 Section 2. The arithmetic mean of the test results of all samples tested from the single lot or
5 batch (including the original Outlier test result) shall then be determined. That mean test result
6 shall be deemed the final result and shall constitute the applicable test result for purposes of this
7 Consent Judgment. If this validated test result is an Outlier as defined in Section 2.2.1, then the
8 terms of Section 3.3 shall apply to that Outlier test result.

9 2.3 If there is an allegation that a Protein Supplement Product is in violation
10 of Section 3.4, ELF may make a written request to the Settling Defendant responsible
11 for producing that Protein Supplement Product, delivered to the address of the Settling
12 Defendant as set forth on Attachment B, for data generated in compliance with
13 Sections 2.1 and 2.2. In response to such a request, Settling Defendant will provide to
14 ELF the date the analysis was performed, the name of the laboratory conducting the
15 test, the test method used by the laboratory, the detection limit used by the laboratory,
16 the lot numbers of the samples tested, and the analytical results within thirty (30) days
17 of ELF's written request. ELF shall keep all such information and data confidential,
18 including from other Defendants. Each Settling Defendant shall provide to ELF within 45
19 days of completing the initial testing of its Protein Supplement Products under Section 2.1, and
20 annually thereafter during the testing period set forth in Section 2.2, a list of all such products
21 for which the test results obtained pursuant to this Section II indicate a Proposition 65 warning
22 is required pursuant to Section III herein.

23 **III. CLEAR AND REASONABLE WARNINGS**

24 3.1 Pursuant to this Consent Judgment, warnings are required under
25 Proposition 65 only with respect to Protein Supplement Products a Settling Defendant
26 sells to California consumers that expose users to more than three (3.0) micrograms of
27 lead in a Daily Serving, unless the Protein Supplement Product is a Gainer Product or a
28 Chocolate Product, as those terms are defined in this paragraph and identified on

1 Attachment A for each Settling Defendant. Warnings are required for Gainer Products
2 and Chocolate Products a Settling Defendant sells to California consumers that expose
3 users to more than four (4.0) micrograms of lead in a Daily Serving. "Gainer Products"
4 are Protein Supplement Products that are marketed primarily as "weight gainers", "mass
5 gainers", "extra calories" or any similar designation, to a sports nutrition/weight-
6 lifting/bodybuilding-oriented consumer, or to consumers seeking additional calories to
7 supplement their diets for purposes of gaining weight or for purposes of maximizing caloric
8 intake per consumption episode. "Chocolate Products" are Protein Supplement Products that
9 contain any variety or form of the ingredient generally referred to as "chocolate," including
10 without limitation, the ingredients chocolate, chocolate liquor, cocoa, cocoa mass, cocoa butter,
11 cocoa powder, cacao, fudge, or any variation of, or substitute for, any of those ingredients.

12 3.2 A "Daily Serving" for purposes of determining Proposition 65
13 compliance for chemicals present in the Protein Supplement Products shall be defined
14 as one of the following, as applicable: (a) if the Protein Supplement Product label
15 recommends a single serving, then the single recommended serving size; (b) if the
16 Protein Supplement Product label includes no recommended number of servings, then
17 the serving size set forth on the "Nutritional Facts" or "Supplement Facts" portion of
18 the label; (c) if the Protein Supplement Product label recommends a range of servings
19 in one day, then the amount which is two-thirds (2/3) of the maximum number of
20 servings recommended on the label; (d) if the Protein Supplement Product label
21 recommends a specific number of servings per day that is more than one serving per day, then
22 the amount which is two-thirds (2/3) of the specifically recommended servings; or (e)
23 commencing on the first anniversary of the Effective Date, if the Protein Supplement Product
24 label recommends a specific number of servings per day that is more than one serving per day,
25 then the specifically recommended number of servings. On the first anniversary of the
26 Effective Date, Section 3.2(d) shall terminate.

27 3.3 When calculating whether a Protein Supplement Product exceeds the
28 warning threshold: (1) Settling Defendant must compare the warning threshold value to

1 the arithmetic mean of at least three (3) samples tested in accordance with Section 2.1.
2 However, a Settling Defendant may, at its option, calculate the arithmetic mean using
3 up to ten (10) samples; and (2) Settling Defendant must base its calculation on the
4 Daily Serving amount as defined in section 3.2. Notwithstanding the foregoing, a Settling
5 Defendant may not include an Outlier test result (as defined in Section 2.2.1) in calculating the
6 arithmetic mean, and if a Settling Defendant elects to sell a Protein Supplement Product to
7 California consumers for which an Outlier test result is obtained and validated as provided for
8 in Section 2.2.2, then that specific product lot or batch from which the Outlier result was
9 derived shall be subject to the warning obligations of this Section 3. Settling Defendant shall
10 have thirty (30) days from the date the relevant test result mean is calculated to satisfy the
11 applicable obligations of this Section 3 for Protein Supplement Products manufactured,
12 distributed or sold after that date.

13 **3.4 Warning Standard.** No later than one year after entry of this Consent
14 Judgment, each Settling Defendant shall not manufacture for sale in the State of
15 California, distribute into the State of California, or sell in the State of California any
16 Protein Supplement Product the ingestion of which results in an exposure greater than
17 the applicable warning threshold set forth in Section 3.1, as calculated in accordance
18 with Section 3.3, unless a warning is placed on the packaging, labeling or directly to or
19 on the Protein Supplement Product that states:

20 “[CALIFORNIA PROPOSITION 65] WARNING:
21 This product contains lead, a chemical known [to the State of California] to cause
[cancer,] birth defects[,] or other reproductive harm.”

22 (hereinafter “Product Warning”). The text contained in the brackets is optional per each
23 Settling Defendant’s sole discretion. Product Warnings shall be placed with such
24 conspicuousness as compared with other words, statements, designs and/or devices on the
25 labeling or packaging as to render it likely to be read and understood by an ordinary individual
26 under customary conditions of use or purchase. If the Product Warning is displayed on the
27 product container or labeling, the warning shall be at least the same size as the largest of any
28

1 other health or safety warnings on the container or labeling, and the word “warning” shall
2 be in all capital letters and in bold print. If printed on the labeling itself, the Product Warning
3 shall be contained in the same section of the labeling that states other safety warnings
4 concerning the use of the Protein Supplement Product.

5 3.4.1 Mail Order Sales

6 For any mail order sales by a Settling Defendant to a consumer in California, the warning
7 language required under this Consent Judgment shall also be included in the mail order
8 catalogue, either on the same page as any order form, or on the same page upon which the
9 Protein Supplement Product’s price is listed, in the same type size as the surrounding,
10 non-heading text. If necessary, the Product Warning shall be added in the first print run of the
11 mail order catalogue which occurs following one year after entry of this Consent Judgment.

12 3.4.2 Internet Sales

13 For internet sales by a Settling Defendant to a California consumer of Protein Supplement
14 Products subject to the warning requirements of Section 3.3, the warning language required
15 under this Consent Judgment shall be displayed in the same type size as the surrounding, non-
16 heading text, either: (a) on the same page upon which the Protein Supplement Product is
17 displayed or referenced; (b) on the same page as the order form for the Protein Supplement
18 Product; (c) on the same page as the price for the Protein Supplement Product is displayed; or
19 (d) in a dialogue box which appears when a California address for delivery is provided by the
20 consumer, so long as the dialogue box appears prior to the completion of the internet sale and
21 requires the consumer to affirmatively accept receipt of the warning set forth in the dialogue
22 box (which shall be displayed in the same type size as the surrounding, non-heading text on
23 the screen at the time of the appearance of the dialogue box), as a condition precedent to
24 completing the sale. If necessary, the Product Warning shall be added following one year after
25 entry of this Consent Judgment.

26 3.5 Any changes to the language or format of the warnings required under
27 Section 3.3 shall be made only after Court approval and following written notice to
28 Plaintiff and to the Attorney General.

1 **3.6** A Defendant may sell or distribute in California or ship to California a Protein
2 Supplement Product without any of the warnings required under Section 3.3 following one year
3 after entry of this Consent Judgment only if that Settling Defendant has conducted
4 testing in accordance with the requirements referenced in Section 3.1 demonstrating that the
5 Protein Supplement Product does not expose users to more lead in a Daily Serving than
6 allowed under Section 3.4 without a warning, as determined using the calculation set
7 forth in Section 3.3.

8 **3.7** So long as a Settling Defendant complies and remains in compliance with the
9 requirements of Section 3.1 through 3.5 for each of its Protein Supplement Products, the Parties
10 agree that such Protein Supplement Products shall be deemed to comply with Proposition 65
11 with respect to lead beginning immediately upon entry of the Consent Judgment, and that
12 compliance with this Consent Judgment shall fully and completely satisfy such Settling
13 Defendant's obligations under Proposition 65 to provide warnings for such Protein
14 Supplement Products with respect to the presence of lead, regardless of when manufactured,
15 distributed or sold.

16 **3.8** At least sixty (60) days before any discontinuance of any warnings that any
17 Settling Defendant has issued pursuant to this Consent Judgment, the Settling Defendant shall
18 conduct the testing required to demonstrate that the Protein Supplement Products conform to
19 Sections 3.1, using the analytical methods set forth in Section 2.1. If there is an allegation that a
20 Protein Supplement Product for which there has been a discontinued warning is in violation of
21 Section 3.4, then ELF may, as provided for in Section 2.3, request all related data generated in
22 compliance with this Consent Judgment. ELF shall keep confidential, including from other
23 Settling Defendants, all such information and data received from a Settling Defendant. This
24 Section 3.8 shall not apply to a Protein Supplement Product which is discontinued.

25 **3.9** Should ELF reach a settlement or be subject to a binding disposition (judicial,
26 contractual or otherwise) with or concerning any other defendant, person or entity in any
27 threatened, pending or future lawsuit involving claims of Proposition 65 violations and protein
28 supplement products, or with terms that set forth less stringent lead standards than those herein

1 defining when Proposition 65 warnings will not be required (“Alternative Standards”),
2 then ELF shall provide each Settling Defendant with a copy of the settlement or binding
3 disposition (only in the case of a settlement or binding disposition entered into by, or binding
4 upon, ELF), and ELF agrees to join any Settling Defendant’s motion to modify this Consent
5 Judgment so that the Alternative Standards apply to any protein supplement products that
6 Settling Defendants manufacture for sale in California, distribute into California, or sell to
7 California consumers, with respect to any Settling Defendant that so moves.

8 **3.10** Should ELF reach a settlement or be subject to a binding disposition (judicial,
9 contractual or otherwise) with or concerning any other defendant, person or entity in any
10 threatened, pending or future lawsuits involving claims of Proposition 65 violations and protein
11 supplement products that permit warnings that are different in content, method or appearance
12 than is specified in Section 3.4 of this Consent Judgment, then ELF shall provide each Settling
13 Defendant with a copy of the settlement, or binding disposition (only in the case of a settlement
14 or binding disposition entered into by, or binding upon, ELF), and ELF agrees to join any
15 Settling Defendant’s motion to modify this Consent Judgment to allow such Settling Defendant
16 to warn in the manner specified in such settlement or binding disposition, as to any protein
17 supplement products that the Settling Defendant sells, or distributes for sale, in California, if
18 that Settling Defendant so moves.

19 **IV. MONETARY RELIEF**

20 **4.1** Within fifteen (15) days after entry of this Consent Judgment, Settling
21 Defendants shall pay ELF a total of \$755,000, with \$675,000 to be applied towards
22 ELF’s costs and attorney’s fees and \$80,000 as penalties (collectively, “Settlement
23 Proceeds”). The respective shares for each defendant are as follows: each Settling
24 Defendant shall pay an equal share or \$57,272 except Vital Pharmaceuticals, Inc. and
25 Chemisource, Inc. who shall pay \$62,500 each. Each defendant shall pay its share of
26 the Settlement Proceeds with a check made payable to Baron & Budd, P.C. and delivered to
27 Laura Baughman at Baron & Budd, P.C., 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas
28 75219. ELF shall bear all responsibility for apportioning and paying to the State of California

1 any portion of the Settlement Proceeds as required by California Health & Safety Code §
2 25249.12(d), and no Settling Defendant shall have any liability if payments to the State of
3 California are not made by ELF. In the event of a partial or complete default of payment by any
4 Settling Defendant, each Settling Defendant shall have liability only for its payment share as set
5 forth above. The failure of any Settling Defendant to tender payment shall not be deemed a
6 breach of this agreement by all Settling Defendants or by any Settling Defendant other than the
7 Settling Defendant failing to tender payment.

8 **4.2** The payment made pursuant to Section 4.1 shall be the only monetary
9 obligation of the Settling Defendants with respect to this Consent Judgment, including as to any
10 fees, costs, or expenses ELF has incurred in relation to this action.

11 **V. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

12 ELF agrees to comply with the reporting requirements referenced in California Health &
13 Safety Code § 25249.7(f). Pursuant to the regulations promulgated under that section, ELF
14 shall present this Consent Judgment to the California Attorney General's Office within
15 two (2) days after receipt of all necessary signatures. The Parties acknowledge that, pursuant
16 to Health & Safety Code § 25249.7, a noticed motion must be filed to obtain judicial approval
17 of the Consent Judgment. Accordingly, a motion for approval of the Consent Judgment shall be
18 prepared and filed by ELF within a reasonable period of time after the date this Consent
19 Judgment is signed by all Parties.

20 **VI. MODIFICATION OF SETTLEMENT**

21 This Consent Judgment may be modified by: (1) written agreement among the Parties
22 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of ELF or
23 any of the Settling Defendants as provided by law and upon entry of a modified Consent
24 Judgment by the Court thereon. All Parties and the California Attorney General's Office
25 shall be served with notice of any proposed modification to this Consent Judgment at least
26 fifteen (15) days in advance of its consideration by the Court.

1 **VII. APPLICATION OF CONSENT JUDGMENT**

2 7.1 Each signatory to this Consent Judgment certifies that he or she is fully
3 authorized by the Party that he or she represents to enter into and execute the Consent Judgment
4 on behalf of the Party represented and legally bind that Party.

5 7.2 This Consent Judgment shall apply to and be binding upon ELF and each of
6 the Settling Defendants, their officers, directors, and shareholders and the predecessors,
7 successors or assigns of each of them.

8 **VIII. CLAIMS COVERED**

9 8.1 This Consent Judgment is a final and binding resolution between ELF, on its
10 behalf and in the public interest, and each Settling Defendant of any violation of Proposition 65
11 up through the date of entry of this order by the Court that could have been asserted against any
12 Settling Defendant for failure to provide clear, reasonable and lawful warnings of exposures to
13 lead that result from ingestion of Protein Supplement Products as defined herein. No claim is
14 reserved as between ELF on its own behalf and Settling Defendants, and ELF on its behalf and
15 Settling Defendants expressly waive any and all rights which they may have under the
16 provisions of Section 1542 of the Civil Code of the State of California, which provides:

17 **A general release does not extend to claims which the creditor does not**
18 **know or suspect to exist in his favor at the time of executing the release,**
19 **which if known by him must have materially affected his settlement with**
20 **the debtor.**

21 8.2 **ELF Release of Settling Defendants.** In further consideration of the
22 promises and agreements herein contained, and for the payment to be made pursuant to Section
23 4.1, ELF, on behalf of itself and in the public interest, its past and current agents,
24 representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or
25 participate in, directly or indirectly, any form of legal action addressing all claims occurring on
26 or before the entry of this Consent Judgment, and releases all claims occurring on or before the
27 entry of this Consent Judgment, including, without limitation, all actions, causes of action, in
28 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses
or expenses, including, but not limited to, investigation fees, expert fees and attorneys'

1 fees of any nature whatsoever, whether known or unknown, fixed or contingent against each of
2 the Settling Defendants and their past, present and future owners, direct and indirect parent
3 companies, corporate affiliates, subsidiaries, upstream and downstream suppliers, distributors,
4 manufacturers or customers, direct and indirect retailers, clients, and each of their respective
5 officers, directors, attorneys, representatives, shareholders, agents, insurers, employees
6 successors and assigns arising under Proposition 65 related to the alleged failure to warn
7 about exposures to or identification of lead contained in the Protein Supplement Products
8 manufactured, packaged, distributed, marketed, or sold by Settling Defendants.

9 ELF, on behalf of itself, its past and current agents, representatives, attorneys, successors
10 and/or assignees, and in the public interest, and the Settling Defendants further agree and
11 acknowledge that this Consent Judgment is a full, final, and binding resolution of any violations
12 occurring on or before the entry of this Consent Judgment by each of the Settling Defendants
13 and their past, present and future owners, direct and indirect parent companies, corporate
14 affiliates, subsidiaries, upstream and downstream suppliers, distributors, manufacturers or
15 customers, direct and indirect retailers, clients, and each of their respective officers, directors,
16 attorneys, representatives, shareholders, agents, insurers, employees, successors and
17 assigns arising under Proposition 65 related to the alleged failure to warn about exposures
18 to or identification of lead contained in the Protein Supplement Products as set forth in the
19 Attachment A hereto for each Settling Defendant.

20 In addition, ELF, on behalf of itself, its attorneys and its agents, waives all rights to
21 institute or participate in, directly or indirectly, any form of legal action addressing all claims
22 occurring on or before the entry of this Consent Judgment, and releases all claims occurring on
23 or before the entry of this Consent Judgment against the Settling Defendants arising under
24 Proposition 65 related to each of the Settling Defendants' alleged failure to warn about
25 exposures to or identification of lead contained in the Protein Supplement Products and for all
26 actions or statements regarding the alleged failures to warn about exposures to or identification
27 of lead contained in the Protein Supplement Products made by each of the Settling
28 Defendants or its attorneys or representatives in the course of responding to those

1 alleged violations of Proposition 65 as alleged in the Complaint.

2 **8.3 Release of ELF.** Each Settling Defendant waives all rights to institute
3 any form of legal action against ELF or its officers, employees, agents, attorneys or
4 representatives, for all actions taken or statements made or undertaken by ELF and its
5 officers, employees, agents, attorneys or representatives, in the course of seeking
6 enforcement of Proposition 65 in this action.

7 **IX. RETENTION OF JURISDICTION**

8 This Court shall retain jurisdiction of this matter to implement this Consent
9 Judgment.

10 **X. COURT APPROVAL**

11 If this Consent Judgment is not approved by this Court, it shall be of no force or
12 effect and cannot be used in any proceeding for any purpose.

13 **XI. ENFORCEMENT**

14 In the event that a dispute arises with respect to any provisions of this Consent
15 Judgment, the Parties shall meet and confer within thirty (30) days of receiving written
16 notice of the alleged violation from another party. In the event that the Parties are
17 unable to resolve their dispute through the meet and confer process, this Consent
18 Judgment may be enforced using any available provision of law. This Consent
19 Judgment shall be enforceable by the Parties hereto and by the Attorney General of the
20 State of California. Notwithstanding any language to the contrary in Section 2.3, 3.8 or
21 otherwise herein, ELF and/or the Attorney General may disclose Settling Defendants' test
22 results in a court filing in support of any motion to enforce this Consent Judgment provided that
23 ELF and/or the Attorney General first provides such Settling Defendant an opportunity to make
24 a motion for leave to seal such data pursuant to the Protective Order entered by the Court in this
25 action on February 29, 2012.

26 **XII. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State
28 of California. In the event that Proposition 65 is repealed or is otherwise rendered

1 inapplicable by reason of law generally, or as to the Protein Supplement Products
2 specifically, then the Settling Defendants shall have no further obligations pursuant to
3 this Consent Judgment with respect to those Protein Supplement Products that are so
4 affected.

5 **XIII. EXCHANGE IN COUNTERPARTS**

6 Stipulations to this Consent Judgment may be executed in counterparts and by facsimile,
7 each of which shall be deemed an original, and all of which, when taken together, shall be
8 deemed to constitute one document.

9 **XIV. NOTICES**

10 All correspondence and notices required to be provided pursuant to this Consent
11 Judgment shall be in writing and personally delivered or sent by: (a) first-class, registered,
12 certified return receipt requested, or (b) by overnight courier on ELF or a Settling Defendant by
13 the others at the addresses set forth below. Either ELF or a Settling Defendant may specify in
14 writing to the other Parties a change of address to which all notices and other communications
15 shall be sent.

16 Whenever notice or a document is required to be sent to ELF, it shall be sent to:

17
18 Laura J. Baughman
19 Baron & Budd, P.C.
3102 Oak Lawn Avenue, Suite 1100
20 Dallas, TX 75219.

21 Whenever notice or a document is required to be sent to a Settling Defendant, it shall be
22 sent to the addresses specified on Attachment B.

23 **XV. SEVERABILITY**

24 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
25 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
26 provisions remaining shall not be adversely affected.

27 **XVI. ENTIRE AGREEMENT**

28 This Consent Judgment contains the sole and entire agreement and understanding of the

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.
6

7 **APPROVED AS TO SUBSTANCE:**

8 Dated: _____
9

Defendant _____
By: _____
Its: _____

10
11 Dated: 12/30/13

Environmental Law Foundation
By: James Emerson
Its: President

12
13
14
15 **APPROVED AS TO FORM:**

16 Dated: 1/22/14

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS
By: Laura Baughman
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

17
18
19
20
21
22 Dated: _____

FIRM: _____

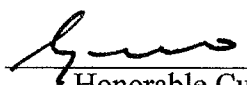
23
24
25 By: _____
Name: _____
Attorneys for Defendant: _____
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AND ORDERED:

subject to Memorandum Order
Dated February 14 2014

Dated: FEB. 14, 2014



Honorable Curtis E.A. Karnow
Judge of the Superior Court
Department 304

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6

7 **APPROVED AS TO SUBSTANCE:**

8 Dated: _____

7/10/14
Defendant Abbott Laboratories
By: Tobin R. Cohen
Its: Division Vice President / General Manager

9

10

11 Dated: _____

Environmental Law Foundation
By: _____
Its: _____

12

13

14

15 **APPROVED AS TO FORM:**

16 Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

17

18

By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

19

20

21

22 Dated: Jan. 17, 2014

FIRM: Munger, Tolles & Olson LLP

23

24

By: Patrick J. Cafferty, Jr. / PJD
Name: PATRICK J. CAFFERTY, JR.
Attorneys for Defendant:

25

26

ABBOTT LABORATORIES

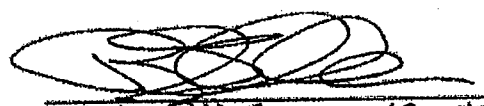
27

28

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7 **APPROVED AS TO SUBSTANCE:**

8 Dated: 1/6/14



9 Defendant Bio-Engineered Supplements & Nutrition Inc
By: Brent V. Schillage
Its: Senior Counsel

10
11 Dated: _____

Environmental Law Foundation
By: _____
Its: _____

12
13
14
15 **APPROVED AS TO FORM:**

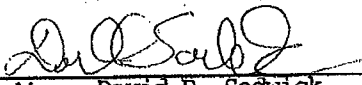
16 Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

17
18 By: _____
19 Laura Baughman
20 Baron & Budd, P.C.
21 Attorneys for Plaintiff

22 Dated: January 6, 2014

FIRM: TATRO TEKOSKY SADWICK LLP

23
24 By: 
25 Name: David B. Sadwick
26 Attorneys for Defendant:
27 Bio-Engineered Supplements &
28 Nutrition Inc.

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7 **APPROVED AS TO SUBSTANCE:**

8 Dated: 12/20/13

9 Defendant Biochem, a brand of Country Life, LLC
By: BRIAN RICHMOND Brian Richmond
Its: COB

10
11 Dated: _____

Environmental Law Foundation
By: _____
Its: _____

12
13
14
15 **APPROVED AS TO FORM:**

16 Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

17
18 By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

19
20
21
22 Dated: 1/6/2014

FIRM: Sidley Austin LLP

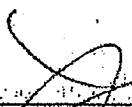
23
24 By: [Signature]
Name: JUDITH PRATTIS
Attorneys for Defendant:

Biochem, a brand of Country Life LLC

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7 **APPROVED AS TO SUBSTANCE:**

8 Dated: Jan 3, 2014


Defendant Champion Nutrition, Inc.
By: Jose Minski
Its: President

11 Dated: _____

Environmental Law Foundation
By: _____
Its: _____

14
15 **APPROVED AS TO FORM:**


16 Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

18 By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

22 Dated: January 6, 2014

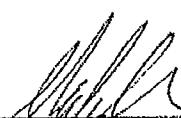
FIRM: TATRO TEKOSKY SADWICK LLP

24 By: 
Name: David B. Sadwick
Attorneys for Defendant:
Champion Nutrition, Inc.

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7 APPROVED AS TO SUBSTANCE:

8 Dated: 1/6/2014


Defendant Chemi-Source, Inc. dba MRM
By: Mark Olson
Its: CEO

11 Dated: _____

Environmental Law Foundation
By: _____
Its: _____

14
15 APPROVED AS TO FORM:

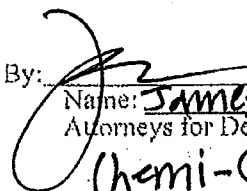
16 Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

22 Dated: 1/6/14

FIRM: Rogers Joseph O'Donnell


By: 
Name: James Robert Mayne
Attorneys for Defendant:
Chemi-Source, Inc dba
MRM

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO SUBSTANCE:

Dated: January 20, 2014


Robert Wildman, Ph.D

Defendant Dymalize Enterprises LLC
By: Robert Wildman, Ph.D
Its: Chief Science Officer, Senior VP, Research

Dated: _____

Environmental Law Foundation
By: _____
Its: _____

APPROVED AS TO FORM:

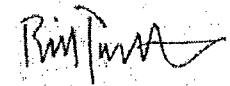
Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

Dated: January 21, 2014

FIRM: MORRISON & FOERSTER LLP


By: _____
Name: William F. Tarantino
Attorneys for Defendant:

Dymalize Enterprises LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto, No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

APPROVED AS TO SUBSTANCE:

Dated: 1/6/2014

C. Brennan
Defendant Healthwatchers (DE), Inc.
By: Christopher Brennan
Its: Sr. VP, General Counsel and Secretary

Dated: _____

Environmental Law Foundation
By: _____
Its: _____

APPROVED AS TO FORM:

Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

Dated: 1/6/2014

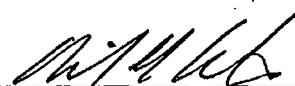
FIRM: Sidley Austin LLP

By: J. Praitis
Name: JUDITH PRAITIS
Attorneys for Defendant:
Healthwatchers (DE), Inc.

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7 **APPROVED AS TO SUBSTANCE:**

8 Dated: 12/21/13


Defendant Idea Sphere, Inc., operating as ISI Brands, Inc.
By: Richard H. Newirth
Its: CLO

11 Dated: _____

Environmental Law Foundation
By: _____
Its: _____

14
15 **APPROVED AS TO FORM:**

16 Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

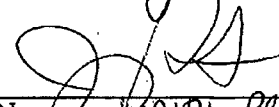
18

By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

22 Dated: 1/6/2014

FIRM: Sidley Austin LLP

24

By: 
Name: JUDITH PRATTS
Attorneys for Defendant:

25

Idea Sphere, Inc., operating as ISI Brands, Inc.

28

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO SUBSTANCE:

Dated: January 21, 2014


Chris Hickey

Defendant The Isopure Company LLC
By: Chris Hickey
Its: President

Dated: _____

Environmental Law Foundation
By: _____
Its: _____

APPROVED AS TO FORM:

Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

Dated: January 21, 2014

FIRM: MORRISON & FOERSTER LLP



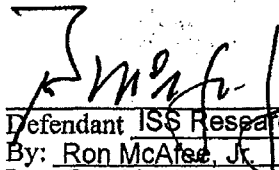
By: _____
Name: William F. Tarantino
Attorneys for Defendant:

The Isopure Company LLC

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7 **APPROVED AS TO SUBSTANCE:**

8 Dated: December 28, 2013


Defendant ISS Research, LLC
By: Ron McAfee, Jr.
Its: President

11 Dated: _____

Environmental Law Foundation
By: _____
Its: _____

14
15 **APPROVED AS TO FORM:**


16 Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

22 Dated: 1/6/2014

FIRM: Sidley Austin, LLP

By: 
Name: JUDITH PLAITIS
Attorneys for Defendant:
ISS Research, LLC

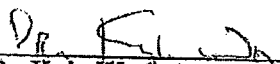
1 **APPROVED AS TO SUBSTANCE:**

2 Dated: _____

3 _____
4 Environmental Law Foundation
By: _____
Its: _____

5
6 Dated: December 23, 2013

LABRADA BODYBUILDING NUTRITION, INC.

7
8 
9 By: Dr. Kyle Workman
Its: Chief Operation Officer

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:

Dated: _____


BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

By: _____

Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

Dated: December 20, 2013

LAW OFFICE OF KENNETH E. CHYTEN

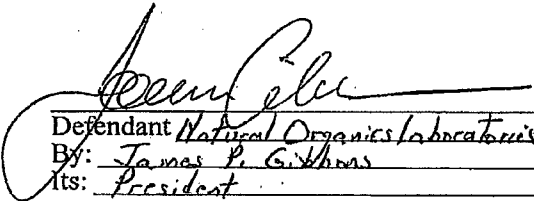
By: 

Kenneth E. Chyten, Esq.
Attorneys for Defendant Labrada
Bodybuilding Nutrition, Inc.

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7 **APPROVED AS TO SUBSTANCE:**

8 Dated: 12/26/13


Defendant Natural Organics Laboratories, Inc.
By: James P. Githens
Its: President

11 Dated: _____

Environmental Law Foundation
By: _____
Its: _____

14
15 **APPROVED AS TO FORM:**

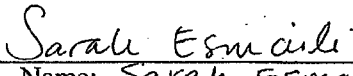
16 Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

22 Dated: 1/6/14

FIRM: Arnold & Porter LLP


By: 
Name: Sarah Esmaili
Attorneys for Defendant:
Natural Organics Laboratories, Inc.

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO SUBSTANCE:

Dated: 1/6/14


Defendant Vital Pharmaceuticals, Inc.
By: John A. Owoc
Its: CEO

Dated: _____

Environmental Law Foundation
By: _____
Its: _____

APPROVED AS TO FORM:

Dated: _____

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS

By: _____
Laura Baughman
Baron & Budd, P.C.
Attorneys for Plaintiff

Dated: 1/6/14

FIRM: KATTEN MUCHIN ROSENMAN, LLP

By: C. Costley (AS)
Name: Christina L. Costley
Attorneys for Defendant:
Vital Pharmaceuticals, Inc.

1 **ATTACHMENT A**

2 The “**Settling Defendant**” is Abbott Laboratories (“Abbott”):

3

4 1. The “**Protein Supplement Products**” covered by this Consent Judgment as to the

5 Settling Defendant listed above are all sizes, flavors, packaging, forms and potencies of “ready to

6 drink” nutritional drinks and “ready to mix” powders used to prepare nutritional drinks supplying

7 at least 5 grams of protein according to the “Nutrition Facts” or “Supplement Facts” panel on the

8 product label previously or currently manufactured by, sold by, or distributed directly or indirectly

9 in or into California by, or on behalf of, the Settling Defendant including nutritional

10 drinks products otherwise meeting the definition in this paragraph 1 which are first introduced into

11 California subsequent to the effective date of this Consent Judgment and manufactured by, sold

12 by, or distributed directly or indirectly in or into California by, or on behalf of, any Settling

13 Defendant under the EAS brand. The Protein Supplement Products of the Settling Defendant that

14 are covered by this Consent Judgment include, but are not limited to, the following:

15

16 **LIQUIDS**

17 **Non-Chocolate**

- 18 Myoplex Lite RTD (Vanilla, Strawberry)
- 19 Myoplex Strength RTD (Vanilla)
- 20 Myoplex Original RTD (Vanilla, Strawberry)
- 21 AdvantEdge CC RTD (Vanilla, Strawberry, Café Caramel)

22

23 **Chocolate**

- 24 Myoplex Original RTD (Chocolate, Rich Dark Chocolate, Cookies & Cream)
- 25 Myoplex Strength RTD (Chocolate, Cookies & Cream)
- 26 Myoplex Lite RTD (Chocolate)
- 27 AdvantEdge CC RTD (Rich Dark Chocolate, Chocolate)

1 **POWDERS**

2 **Non-Chocolate**

3 AdvantEdge Soy Powder (Vanilla)

4 Whey Protein Powder (Vanilla)

5 Recovery Protein Powder (Vanilla)

6 Myoplex Original Powder (Vanilla, Strawberry)

7 Myoplex Deluxe Powder (Vanilla)

8 Myoplex Lite Powder (Vanilla)

9 Lean 15 Powder (Vanilla)

10

11 **Chocolate**

12 AdvantEdge Soy Powder (Chocolate)

13 Whey Protein Powder (Chocolate)

14 Recovery Protein Powder (Chocolate)

15 Myoplex Original Powder (Chocolate)

16 Myoplex Deluxe Powder (Chocolate)

17 Myoplex Lite Powder (Chocolate)

18 Lean 15 Powder (Chocolate)

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. **“Gainer Products”** are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and meeting the definition of “Gainer Products” in Section 3.1 of the Consent Judgment.

3. **“Chocolate Products”** are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and meeting the definition of “Chocolate Products” in Section 3.1 of the Consent Judgment. The current Chocolate Products of the Settling Defendant that are covered by this Consent Judgment include, but are not limited to, liquid and powdered chocolate products identified in Paragraph 1.

ATTACHMENT A

1
2
3 The “Settling Defendant” for “Biochem, a brand of Country Life, LLC” is: Country Life, LLC.
4

5 One “Protein Supplement Product” covered by this Consent Judgment is Biochem Sports 100%
6 Greens & Whey Powder, Chocolate.
7

8 1. The additional “Protein Supplement Products” covered by this Consent Judgment are
9 set forth below as to Country Life, LLC: all sizes, flavors, packaging, forms and potencies of
10 “ready to drink” liquids and/or “ready to mix” powders and/or tablets and/or packets of dietary
11 supplement products and/or foods supplying at least 5 grams of protein according to the “Nutrition
12 Facts” or “Supplement Facts” panel on the product label previously or currently manufactured by, or
13 sold by, or distributed directly or indirectly in or into California by, or on behalf of, Country Life
14 LLC and including those dietary supplement products and foods otherwise meeting the definition in
15 this paragraph 1 which are first introduced into California subsequent to the effective date of this
16 Consent Judgment and manufactured by, or sold by, or distributed directly or indirectly in or into
17 California by, or on behalf of, Country Life LLC.

18 2. “Gainer Products” are Protein Supplement Products previously, now or in the future
19 meeting the definition in paragraph 1 above and also meeting the definition of “Gainer Products” in
20 Section 3.1 of the Consent Judgment.

21 3. “Chocolate Products” are Protein Supplement Products previously, now or in the future
22 meeting the definition in paragraph 1 above and also meeting the definition of “Chocolate Products”
23 in Section 3.1 of the Consent Judgment.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT A

The "**Settling Defendant**" is Bio-Engineered Supplements & Nutrition, Inc. ("BSN") on behalf of BSN and all of BSN's past, present, future, direct, and indirect (a) owners, (b) parent companies, (c) corporate affiliates, (d) related companies, (e) subsidiaries, and each of their respective successors and assigns; without limitation, "Settling Defendant" includes BSN, Optimum Nutrition, Inc. ("ON"), and American Body Building Products LLC ("ABB").

1. The "**Protein Supplement Products**" covered by this Consent Judgment as to the Settling Defendant defined above are all varieties, sizes, flavors, packaging, forms, potencies and any other variations protein supplements and protein supplement products, whether or not listed on the product list ("Product List") accompanying (and incorporated by this reference into) this Attachment A, including without limitation "ready to drink" nutritional drinks and "ready to mix" powders used to prepare nutritional drinks supplying at least 5 grams of protein according to the "Nutrition Facts" or "Supplement Facts" panel on the product label previously or currently manufactured by, sold by, introduced into the stream of commerce, or distributed directly or indirectly in or into California by, or on behalf of, the Settling Defendant defined above, including such products otherwise meeting the definition in this paragraph which are first introduced into California subsequent to the effective date of this Consent Judgment, and the Settling Defendant defined above may include any of such newly introduced products as covered Protein Supplement Products by specifically identifying them in a list provided to ELF once per year or within a reasonable time period after such newly introduce products are first distributed or sold in California. The Protein Supplement Products of the Settling Defendant that are covered by this Consent Judgment include, but are not limited to, such products on the accompanying Product List.

2. "**Gainer Products**" are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and meeting the definition of "Gainer Products" in Section 3.1 of the Consent Judgment.

1 3. "Chocolate Products" are Protein Supplement Products previously, now or in the future
2 meeting the definition in paragraph 1 above and meeting the definition of "Chocolate Products" in
3 Section 3.1 of the Consent Judgment. The current Chocolate Products of the Settling Defendant
4 that are covered by this Consent Judgment include, but are not limited to, liquid and powdered
5 chocolate products identified in Paragraph 1.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Products sold under the BSN brand
SYNTHA-6
SYNTHA-6 RTD
SYNTHA-6 ISOLATE
LEAN DESSERT PROTEIN POWDER
TRUE MASS
TRUE MASS 1200

Products sold under the ON brand
GOLD STANDARD 100% CASEIN
PERFORMANCE WHEY
ANY WHEY
100% SOY PROTEIN
GOLD STANDARD 100% WHEY
CLASSIC WHEY
AFTER MAX

NATURAL OATS & WHEY
NITROCORE 24
PLATINUM HYDROBUILDER
PLATINUM HYDROWHEY
PRO COMPLEX
SERIOUS MASS
2:1:1 RECOVERY
GOLD STANDARD 100% EGG PROTEIN
COMPLETE PROTEIN DIET
WHEY GOLD MEAL
GOLD STANDARD 100% NATURAL WHEY
PRO COMPLEX GAINER
PERFORMANCE WHEY ISOLATE
NATURAL PRO COMPLEX GAINER
PLATINUM TRI-CELLE CASSEIN
GOLD STANDARD NATURAL 100% CASSEIN

Products sold under the ABB brand
PURE PRO Powder
EXTREME XXL Powder
MAXX RECOVERY RTD
BLUE THUNDER RTD
PURE PRO 35 RTD
EXTREME XXL RTD
PURE PRO 50 RTD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT A

The "Settling Defendant" is Champion Nutrition, Inc. ("Champion") on behalf of Champion and all of Champion's past, present, future, direct, and indirect (a) owners, (b) parent companies, (c) corporate affiliates, (d) related companies, (e) subsidiaries, and each of their respective successors and assigns.

1. The "Protein Supplement Products" covered by this Consent Judgment as to the Settling Defendant defined above are all varieties, sizes, flavors, packaging, forms, potencies and any other variations protein supplements and protein supplement products, whether or not listed on the product list ("Product List") accompanying (and incorporated by this reference into) this Attachment A, including without limitation "ready to drink" nutritional drinks and "ready to mix" powders used to prepare nutritional drinks supplying at least 5 grams of protein according to the "Nutrition Facts" or "Supplement Facts" panel on the product label previously or currently manufactured by, sold by, introduced into the stream of commerce, or distributed directly or indirectly in or into California by, or on behalf of, the Settling Defendant defined above, including such products otherwise meeting the definition in this paragraph which are first introduced into California subsequent to the effective date of this Consent Judgment, and the Settling Defendant defined above may include any of such newly introduced products as covered Protein Supplement Products by specifically identifying them in a list provided to ELF once per year or within a reasonable time period after such newly introduce products are first distributed or sold in California. The Protein Supplement Products of the Settling Defendant that are covered by this Consent Judgment include, but are not limited to, such products on the accompanying Product List.

2. "Gainer Products" are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and meeting the definition of "Gainer Products" in Section 3.1 of the Consent Judgment.

3. "Chocolate Products" are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and meeting the definition of "Chocolate Products" in

1 Section 3.1 of the Consent Judgment. The current Chocolate Products of the Settling Defendant
2 that are covered by this Consent Judgment include, but are not limited to, liquid and powdered
3 chocolate products identified in Paragraph 1.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Champion Nutrition, Inc. Product List

Item Description

PURE WHEY CHOCOLATE 2.2 LB
ULTRAMET LO CARB CHOCOLATE 60
METABOLOL II PLAIN 2.2 LB
ULTRAMET LO CARB CHOCOLATE 20
ULTRAMET CHOCOLATE 20 PACK
ULTRAMET VANILLA 60 PACK
ULTRAMET VANILLA 20 PACK
PURE WHEY CHOC PEANUT BUTTER 5LB
MET MAX CHOCOLATE 2.74 LB
PURE WHEY VANILLA 5LB
PURE WHEY VANILLA 64GM 60 PACK
HEAVYWEIGHT CHOCOLATE 3.3 LB
STRENGTH VANILLA 1.8LB
ENDURANCE CHOCOLATE 1.1LB
ENDURANCE CHOCOLATE 1.2LB
ENDURANCE VANILLA 1.1LB
FIT CHOCOLATE 1.5LB
FIT CHOCOLATE 1.9LB
FIT VANILLA 1.5LB
FIT VANILLA 1.7LB
HEAVYWEIGHT COOKIE & CREAM 7LB
MET MAX VANILLA 2.74 LB
PURE WHEY CHOCOLATE 64GM 60 PA
PURE WHEY PLUS CHOCO BRNI 2LB
PURE WHEY PLUS VAN ICE CRM 2LB
SPORT CHOCOLATE 1.5LB
SPORT VANILLA 1.5LB
STRENGTH CHOCOLATE 1.8LB
ULTRAMET LO CARB VANILLA 60 PA
HEAVYWEIGHT VANILLA 3.3 LB
METABOLOL II CHOCOLATE 2.2 LB
SUPER HEAVYWEIGHT CHOCOLATE 6.6LB
ULTRAMET CHOCOLATE 60 PACK
PURE WHEY STRAWBERRY 5 LB
PURE WHEY COOKIES N CREAM 5 LB
PURE WHEY BANANA SCREAM 5 LB
ULTRAMET STRAWBERRY 60 PACK
PURE WHEY CHOCOLATE 5LB
HEAVYWEIGHT CHOCOLATE 7 LB
ULTRAMET BANANA 20 PACK
ULTRAMET STRAWBERRY 20 PACK
PURE WHEY MOCHACCINO 5LB
HEAVYWEIGHT VANILLA 7 LB
HEAVYWEIGHT STRAWBERRY 7 LB
SUPER HEAVYWEIGHT VANILLA 6.6LB
ULTRAMET BANANA 60 PACK
PURE WHEY FUSION CHOCOLATE 5LB
PURE WHEY FUSION VANILLA 5LB
PURE WHEY PLUS CHOCOLATE 4.8LB
PURE WHEY PLUS VANILLA ICE 4.8LB
PURE WHEY PLUS COOKIES N CREAM 4.8LB
PURE WHEY PLUS STRAWBERRY 4.8LB
PURE WHEY PLUS BANANA CREAM 4.8LB
PURE WHEY PLUS CHOCOLATE PEANUT BUTTER 4.8LB
PURE WHEY PLUS COCOA MOCHACCINO 4.8LB

1 ATTACHMENT A

2 The "Settling Defendant" is Chemi-Source, Inc., doing business as Metabolic Response
3 Modifiers (MRM).

4 1. **"Protein Supplement Products"** covered by this Consent Judgment as to Chemi-
5 Source, Inc., doing business as Metabolic Response Modifiers (MRM) ("Chemi-Source") are all
6 brand names, varieties, sizes, ingredient mixtures, flavors, packaging, forms, potencies and any
7 other variations of its protein supplements and protein supplement products that contain protein
8 as a significant and functional ingredient, whether or not listed on the product list ("Product
9 List") accompanying (and incorporated by this reference into) this Attachment A, including
10 without limitation tablets, capsules, "ready to drink" nutritional drinks, and "ready to mix"
11 powders used to prepare nutritional drinks. In addition, as to Protein Supplement Products that
12 are first introduced into California subsequent to entry of the Consent Judgment and sold or
13 distributed directly or indirectly in California by, or on behalf of, Chemi-Source, Chemi-Source
14 may include any of those new products as covered Protein Supplement Products under this
15 Consent Judgment by specifically identifying them in a list provided to ELF once per year or
16 within a reasonable time period after which such new products are first distributed or sold in
17 California.

18 2. **Gainer Products** are Protein Supplement Products previously, now or in the
19 future meeting the definition in paragraph 1 above and meeting the definition of "Gainer
20 Products" in Section 3.1 of the Consent Judgment

21 3. **"Chocolate Products"** are Protein Supplement Products previously, now or in the
22 future meeting the definition in paragraph 1 above and meeting the definition of "Chocolate
23 Products" in Section 3.1 of the Consent Judgment.

24 Non-Exclusive List of Covered Protein Supplement Products

25 All Natural Whey™
26 Low Carb Protein™

- 1 Metabolic Whey™
- 2 Egg White Protein™
- 3 Veggie Protein™
- 4 VeggiElite™
- 5 Cholesstat™
- 6 Casein™
- 7 Massive Muscle Gainer™
- 8 All Natural Gainer™
- 9 Isolate Whey Protein™
- 10 Bone Maximizer II™
- 11 Bone Maximizer III™
- 12 Digest-ALL™ (with enzymes)
- 13 Digest-ALL ICT™(with enzymes)
- 14 Joint Synergy™
- 15 Gut REHAB™
- 16 Creatine Monohydrate™
- 17 TribuPlex™
- 18 BCAA + G™
- 19 RELOAD™
- 20 All Natural RELOAD™
- 21 Flax-N-Whey™
- 22 Fruit-N-Whey™
- 23 Glutamine™
- 24 Tribest™
- 25 All Natural Driven™
- 26 Turbo Driven™

- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

[PROPOSED] CONSENT JUDGMENT AS TO CERTAIN DEFEDENDANTS; ORDER- 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT A

As to Settling Defendant DYMATIZE ENTERPRISES, LLC, the following categories of products shall be the "Protein Supplement Products" covered by this Consent Judgment:

1. The "**Protein Supplement Products**" covered by this Consent Judgment set forth below as to the Settling Defendant listed above are: all sizes, flavors, packaging, forms and potencies of "ready to drink" liquids, semi-solids and/or "ready to mix" powders and/or pills and/or packets of dietary supplement products and/or foods supplying at least 5 grams of protein in a Daily Serving as defined in this Consent Judgment, previously, currently, or in the future manufactured by, sold by, or distributed directly or indirectly in or into California by, or on behalf of, the Settling Defendant listed above, or its corporate subsidiaries and affiliates, under the trade names and trademarks owned by Settling Defendant or its corporate subsidiaries and affiliates. This definition includes those dietary supplement products and foods otherwise meeting this definition which are first introduced into California subsequent to the Effective Date of this Consent Judgment.
2. "**Gainer Products**" are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and meeting the definition of "Gainer Products" in Section 3.1 of the Consent Judgment.
3. "**Chocolate Products**" are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and meeting the definition of "Chocolate Products" in Section 3.1 of the Consent Judgment.

ATTACHMENT A

1
2
3 The “**Settling Defendants**” for “Healthwatchers, (DE) Inc.” are: Healthwatchers, (DE), Inc. and
4 NBTY, Inc., including its direct and indirect subsidiaries, but *excluding* Rexall Sundown, Inc. and
5 additional entity to the extent that entity’s Protein Supplement Products, as defined below in this
6 Attachment A, are subject to that certain Consent Judgment entered on or about December 19, 2003
7 resolving the case *Lynne Todd Edgerton v. Conopco et al.*, Los Angeles Superior Court Case No.
8 BC262906.

9
10 1. The “**Protein Supplement Products**” covered by this Consent Judgment are set forth
11 below as to each of the respective Settling Defendants listed above: all sizes, flavors, packaging
12 forms and potencies of “ready to drink” liquids and/or “ready to mix” powders and/or tablets and/or
13 packets of dietary supplement products and/or foods supplying at least 5 grams of protein according
14 to the “Nutrition Facts” or “Supplement Facts” panel on the product label previously or currently
15 manufactured by, or sold by, or distributed directly or indirectly in or into California by, or on behalf
16 of, any Settling Defendant listed above and including those dietary supplement products and foods
17 otherwise meeting the definition in this paragraph 1 which are first introduced into California
18 subsequent to the effective date of this Consent Judgment and manufactured by, or sold by, or
19 distributed directly or indirectly in or into California by, or on behalf of, any Settling Defendant.

20 2. “**Gainer Products**” are Protein Supplement Products previously, now or in the future
21 meeting the definition in paragraph 1 above and meeting the definition of “Gainer Products” in
22 Section 3.1 of the Consent Judgment.

23 3. “**Chocolate Products**” are Protein Supplement Products previously, now or in the future
24 meeting the definition in paragraph 1 above and meeting the definition of “Chocolate Products” in
25 Section 3.1 of the Consent Judgment.

ATTACHMENT A

The "**Settling Defendants**" for "Idea Sphere, Inc. operating as ISI Brands" are: Twinlab Corporation, Idea Sphere, Inc., Twinlab Corporation d/b/a ISI Brands, Inc., Twinlab Corporation d/b/a Metabolife Corp., and Natural 2U LLC.

1. The "**Protein Supplement Products**" covered by this Consent Judgment are set forth below as to each of the respective Settling Defendants listed above: all sizes, flavors, packaging, forms and potencies of "ready to drink" liquids and/or "ready to mix" powders and/or tablets and/or packets of dietary supplement products and/or foods supplying at least 5 grams of protein according to the "Nutrition Facts" or "Supplement Facts" panel on the product label previously or currently manufactured by, or sold by, or distributed directly or indirectly in or into California by, or on behalf of, any Settling Defendant listed above and including those dietary supplement products and foods otherwise meeting the definition in this paragraph 1 which are first introduced into California subsequent to the effective date of this Consent Judgment and manufactured by, or sold by, or distributed directly or indirectly in or into California by, or on behalf of, any Settling Defendant.

2. "**Gainer Products**" are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and also meeting the definition of "Gainer Products" in Section 3.1 of the Consent Judgment.

3. "**Chocolate Products**" are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and also meeting the definition of "Chocolate Products" in Section 3.1 of the Consent Judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT A

As to Settling Defendant THE ISOPURE COMPANY LLC, the following categories of products shall be the "Protein Supplement Products" covered by this Consent Judgment:

1. The "Protein Supplement Products" covered by this Consent Judgment set forth below as to the Settling Defendant listed above are: all sizes, flavors, packaging, forms and potencies of "ready to drink" liquids and/or "ready to mix" powders and/or tablets and/or packets of dietary supplement products and/or foods supplying at least 5 grams of protein according to the "Nutrition Facts" or "Supplement Facts" panel on the product label previously or currently manufactured by, sold by, or distributed directly or indirectly in or into California by, or on behalf of, the Settling Defendant listed above (including such products sold under the Settling Defendant's trade names and trademarks) and those dietary supplement products and foods otherwise meeting the definition in this paragraph 1 which are first introduced into California subsequent to the effective date of this Consent Judgment and manufactured by, sold by, or distributed directly or indirectly in or into California by, or on behalf of, the Settling Defendant listed above.
2. "Gainer Products" are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and meeting the definition of "Gainer Products" in Section 3.1 of the Consent Judgment.
3. "Chocolate Products" are Protein Supplement Products previously, now or in the future meeting the definition in paragraph 1 above and meeting the definition of "Chocolate Products" in Section 3.1 of the Consent Judgment.

ATTACHMENT A

1
2
3 The "**Settling Defendant**" for "ISS Research, LLC doing business as Integrated Sports Science
4 (sued as Integrated Sports Science)" is: ISS Research, LLC.
5

6 1. The "**Protein Supplement Products**" covered by this Consent Judgment set forth below
7 as to the Settling Defendant listed above are: all sizes, flavors, packaging, forms and potencies of
8 "ready to drink" liquids and/or "ready to mix" powders and/or tablets and/or packets of dietary
9 supplement products and/or foods supplying at least 5 grams of protein according to the "Nutrition
10 Facts" or "Supplement Facts" panel on the product label previously or currently manufactured by,
11 sold by, or distributed directly or indirectly in or into California by, or on behalf of, the Settling
12 Defendant listed above (including such products sold under the Settling Defendant's following trade
13 names and trademarks: ISS Research, Integrated Sports Science and Oh Yeah!) and including those
14 dietary supplement products and foods otherwise meeting the definition in this paragraph 1 which
15 are first introduced into California subsequent to the effective date of this Consent Judgment and
16 manufactured by, sold by, or distributed directly or indirectly in or into California by, or on behalf
17 of, any Settling Defendant.

18 2. "**Gainer Products**" are Protein Supplement Products previously, now or in the future
19 meeting the definition in paragraph 1 above and meeting the definition of "Gainer Products" in
20 Section 3.1 of the Consent Judgment.

21 3. "**Chocolate Products**" are Protein Supplement Products previously, now or in the future
22 meeting the definition in paragraph 1 above and meeting the definition of "Chocolate Products" in
23 Section 3.1 of the Consent Judgment.
24
25
26
27
28

ATTACHMENT A

1
2
3 The "Settling Defendant" is "Labrada Bodybuilding Nutrition, Inc. (the "Settling Defendant").

4 The "Protein Supplement Products" covered by this Consent Judgment as to the Settling
5 Defendant are all sizes, flavors, packaging, forms and potencies of "ready to drink" liquids and/or
6 "ready to mix" powders and/or tablets and/or packets of dietary supplement products and/or foods
7 supplying at least 5 grams of protein according to the "Nutrition Facts" or "Supplement Facts" panel
8 on the product label previously or currently manufactured by, sold by, or distributed directly or
9 indirectly in or into California by, or on behalf of, the Settling Defendant, including those dietary
10 supplement products and foods otherwise meeting the definition in this paragraph which are first
11 introduced into California subsequent to the effective date of this Consent Judgment and
12 manufactured by, sold by, or distributed directly or indirectly in or into California by, or on
13 behalf of, the Settling Defendant. The Protein Supplement Products of the Settling Defendant that
14 are covered by this Consent Judgment include, but are not limited to, the following:

15 CarbWatchers Lean Body Strawberry Ice Cream Hi-Protein Meal Replacement Shake

16 CarbWatchers Lean Body Vanilla Ice Cream Hi-Protein Meal Replacement Shake

17 Lean Body Bananas n Cream Hi-Protein Milk Shakes

18 Lean Body Cookies n Cream Hi-Protein Milk Shakes

19 Lean Body Strawberries n Cream Hi-Protein Milk Shakes

20 Lean Body Strawberry Ice Cream Hi-Protein Meal Replacement Shake

21 Lean Body Vanilla Ice Cream Hi-Protein Meal Replacement Shake

22 Lean Body Vanilla Ice Cream Hi-Protein Milk Shakes

23 Lean Body For Her Strawberry Ice Cream Hi-Protein Meal Replacement Shake

24 Lean Body For Her Vanilla Ice Cream Hi-Protein Meal Replacement Shake

25 LeanPro8 Strawberry Ice Cream Time Release Muscle Building Protein

26 LeanPro8 Vanilla Ice Cream Time Release Muscle Building Protein

27 Lean Body On the Go Bananas n Cream Hi-Protein Milk Shakes

28 [PROPOSED] CONSENT JUDGMENT AS TO CERTAIN DEFENDANTS; ORDER- 1

- 1 Lean Body On the Go Cookies n Cream Hi-Protein Milk Shakes
- 2 Lean Body On the Go Strawberries n Cream Hi-Protein Milk Shakes
- 3 Lean Body On the Go Vanilla Ice Cream Hi-Protein Milk Shakes
- 4 ProV60 Strawberry Ice Cream Maximum Strength Muscle Building Protein
- 5 ProV60 Vanilla Ice Cream Maximum Strength Muscle Building Protein

6 2 “**Gainer Products**” are Protein Supplement Products previously, now or in the future
7 meeting the definition in paragraph 1 above and meeting the definition of “Gainer Products” in
8 Section 3.1 of the Consent Judgment. The Gainer Products of the Settling Defendant
9 that are covered by this Consent Judgment include, but are not limited to, the following:

- 10 Lean Body Mass 60 Vanilla Ice Cream Muscle Building Weight Gainer
- 11 Lean Body Mass 60 Chocolate Ice Cream Muscle Building Weight Gainer

12 3. “**Chocolate Products**” are Protein Supplement Products previously, now or in the future
13 meeting the definition in paragraph 1 above and meeting the definition of “Chocolate Products” in
14 Section 3.1 of the Consent Judgment. The Chocolate Products of the Settling Defendant
15 that are covered by this Consent Judgment include, but are not limited to, the following:

- 16 CarbWatchers Lean Body Chocolate Ice Cream Hi-Protein Meal Replacement Shake
- 17 CarbWatchers Lean Body Chocolate Peanut Butter Hi-Protein Meal Replacement Shake
- 18 Lean Body Chocolate Ice Cream Hi-Protein Meal Replacement Shake
- 19 Lean Body Chocolate Peanut Butter Hi-Protein Meal Replacement Shake
- 20 Lean Body Chocolate Ice Cream Hi-Protein Milk Shakes
- 21 Lean Body On the Go Chocolate Ice Cream Hi-Protein Milk Shakes
- 22 Lean Body For Her Chocolate Ice Cream Hi-Protein Meal Replacement Shake
- 23 LeanPro8 Chocolate Ice Cream Time Release Muscle Building Protein
- 24 ProV60 Chocolate Ice Cream Maximum Strength Muscle Building Protein

25
26
27
28

ATTACHMENT A

Natural Organics Laboratories, Inc.

LIST OF PROTEIN SUPPLEMENT PRODUCTS
(All forms, sizes, and brand names¹)

- 1 Banana Simply Natural Spiru-tein
- 2 Banana Spiru-tein
- 3 Black Cherry Chocolate Spiru-tein
- 4 Blueberries & Cream Spiru-tein
- 5 Cappuccino Spiru-tein
- 6 Carrot-tein Shake with Beta Carotene (Spiru-tein)
- 7 Chai Latte Spiru-tein
- 8 Cherries Jubilee Spiru-tein
- 9 Children's Chocolate Spiru-tein Junior
- 10 Children's Strawberry Spiru-tein Junior
- 11 Chocolate Berry Ultra Energy Acai
- 12 Chocolate Chip Cookie Dough Spiru-tein
- 13 Chocolate Nut Crunch Ultra Energy
- 14 Chocolate Peanut Butter Swirl Spiru-tein
- 15 Chocolate Simply Natural Spiru-tein
- 16 Chocolate Spiru-tein
- 17 Chocolate Ultra Energy
- 18 Cookies & Cream Spiru-tein
- 19 Cookies & Cream Ultra Energy
- 20 Double Fudge Crunch Spiru-tein
- 21 Dream Quest Malibu Miracle
- 22 Dream Quest More Than Milk
- 23 Egg Nog Spiru-tein
- 24 Energy Shake – The Universal Protein
- 25 Exotic Red Fruit Spiru-tein
- 26 Exotic Red Fruit Ultra Energy
- 27 Fruitein Acai
- 28 Fruitein Exotic Red Fruit
- 29 Fruitein Luscious Blue Fruit
- 30 Fruitein Rainbow
- 31 Fruitein Revitalizing Green Foods

¹ The brand names include, without limitation, Nature's Plus and Dream Quest.

- 32 Fruitein Shake – Vegetarian Banana Orange Crème
- 33 Immunectar – A Life Force Beverage
- 34 KETOslim Chocolate Almond Crunch
- 35 KETOslim Shake - Vanilla (with Critical Keto-Nutrients)
- 36 Nutty Berry Burst Spiru-tein
- 37 Original Vanilla Simply Natural Spiru-tein
- 38 Oxy-Nectar
- 39 Peaches & Cream Simply Natural Spiru-tein
- 40 Peaches & Cream Spiru-tein
- 41 Pina Colada Spiru-tein
- 42 Ultra Energy Exotic Berry Crunch
- 43 Raspberry Royale Spiru-tein
- 44 S'mores Spiru-tein
- 45 Skinny Mini Shake – Double Chocolate Fudge Crunch
- 46 Slim & Natural Shake – Chocolate
- 47 Slim & Natural Shake – Strawberry
- 48 Slim & Natural Shake – Vanilla
- 49 Source of Life Energy
- 50 Source of Life GOLD
- 51 Source of Life GOLD Energy
- 52 Source of Life Green Lightning Tri-Part Protein Bar
- 53 Source of Life Red Lightning Tri-Part Protein Bar
- 54 Spiru-tein 25 Shake – Creamy Vanilla
- 55 Spiru-tein GOLD Shake – Banana Berry Blast
- 56 Spiru-tein GOLD Shake – Chocolate
- 57 Spiru-tein GOLD Shake – Chocolate Cherry
- 58 Spiru-tein GOLD Shake – Strawberry
- 59 Spiru-tein GOLD Shake – Tropical Fruit
- 60 Spiru-tein GOLD Shake – Vanilla
- 61 Spiru-tein Plus
- 62 Spiru-tein Shake - Banana (High Protein Energy Meal Banana)
- 63 Spiru-tein Shake - Tropical Fruit (High Protein Energy Meal Tropical Fruit)
- 64 Spiru-tein Whey Cherries Jubilee
- 65 Spiru-tein Whey Chocolate
- 66 Spiru-tein Whey Chocolate (Sweetened)
- 67 Spiru-tein Whey Cookies and Cream
- 68 Spiru-tein Whey Raspberry Royale
- 69 Spiru-tein Whey Strawberry
- 70 Spiru-tein Whey Vanilla
- 71 Spiru-tein Whey Vanilla Sweetened
- 72 Strawberry Banana Spiru-tein Shake

- 73 Strawberry Crunch Ultra Energy
- 74 Strawberry Shortcake Spiru-tein
- 75 Strawberry Simply Natural Spiru-tein
- 76 Strawberry Spiru-tein
- 77 Strawberry Ultra Energy Shake
- 78 Tangerine Dream Spiru-tein Shake
- 79 Thermo Tropic Shake – Mixed Berry
- 80 Turbo-Chocolate Spiru-tein Sport Shake
- 81 Ultra Energy Shake - Vanilla (Invigorating Vanilla)
- 82 Ultra Hair Thick Shake (French Vanilla)
- 83 Vanilla Spiru-tein Shake
- 84 Vanilla Spiru-tein Sport Shake
- 85 Vanilla Spiru-tein
- 86 Red Velvet Spiru-tein Shake
- 87 Spiru-tein Hot Cocoa w/ Marshmallows
- 88 Frutein Strawberry Lemonade Shake

In addition, as to Protein Supplement Products that are first introduced into California subsequent to entry of the Consent Judgment and sold or distributed directly or indirectly in California by, or on behalf of, Natural Organics Laboratories, Inc., Natural Organics Laboratories, Inc. may include any of those new products as covered Protein Supplement Products by specifically identifying them in a list provided to ELF once per year or within a reasonable time period after which such new products are first distributed or sold in California.

1 ATTACHMENT A

2 The “Settling Defendant” for Vital Pharmaceuticals, Inc. (“VPX”) is: Vital Pharmaceuticals, Inc.

3 1. The “Protein Supplement Products” covered by this Consent Judgment set forth below
4 as to the Settling Defendant listed above are: all sizes, flavors, packaging, forms, and potencies of
5 “ready to drink” liquids and/or “ready to mix” powders and/or tablets and/or packets of dietary
6 supplement products and/or foods supplying at least 5 grams of protein according to the “Nutrition
7 Facts” or “Supplement Facts” panel on the product label previously or currently manufactured by,
8 sold by, or distributed directly or indirectly in or into California by, or on behalf of, the Settling
9 Defendant listed above (including but not limited to products sold under the Settling Defendant’s
10 following trade names and trademarks: Zero Carb, Syngex, Stealth, Zero Impact Bars, Bang Bars,
11 Protein Rush Tetra, Protein Rush Vanilla Dream, Power Hit, Protein Rush Chronologix, Shotgun,
12 and Synthesize) and including those dietary supplement products and foods otherwise meeting the
13 definition in this paragraph 1 which are first introduced into California subsequent to the effective
14 date of this Consent Judgment and manufactured by, sold by, or distributed directly or indirectly in
15 or into California by, or on behalf of, any Settling Defendant.

16 2. “Gainer Products” are Protein Supplement Products previously, now or in the future
17 meeting the definition in paragraph 1 above and meeting the definition of “Gainer Products” in
18 Section 3.1 of the Consent Judgment.

19 3. “Chocolate Products” are Protein Supplement Products previously, now or in the future
20 meeting the definition in paragraph 1 above and meeting the definition of “Chocolate Products” in
21 Section 3.1 of the Consent Judgment.

22
23
24
25
26
27
28

ATTACHMENT B

1

2

3 David E. Mendelson, Senior Counsel/Commercial Litigation
4 Abbott Laboratories
5 100 Abbott Park Road
6 Department 324 Building AP6D
7 Abbott Park, IL 60064

6

7 Patrick J. Cafferty, Jr.
8 Munger, Tolles & Olson LLP
9 560 Mission Street, 27th Floor
10 San Francisco, CA 94105-2907

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

ATTACHMENT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Mr. Brian Richmond
Chief Operating Officer
Country Life, LLC
180 Vanderbilt Motor Parkway
Hauppauge, NY 11788

Ms. Ona Scandurra
Director of Regulatory Affairs
Country Life, LLC
180 Vanderbilt Motor Parkway
Hauppauge, NY 11788

Sidley Austin, LLP
Judith Praitis, Esq.
555 West Fifth Street
Suite 4000
Los Angeles, CA 90013

ATTACHMENT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Bio-Engineered Supplements & Nutrition, Inc.
Attn: General Counsel
5901 Broken Sound Parkway NW
Suite 600
Boca Raton, FL
(561) 994-8335
Email: legal@bsnonline.net

Steven R. Tekosky
David B. Sadwick
Tatro Tekosky Sadwick LLP
333 S. Grand Avenue, Suite 4270
Los Angeles, CA 90071

ATTACHMENT B

1

2

3 **Jack Minski**
1301 Sawgrass Corporate Parkway
4 Sunrise, FL 33323

5

6 Steven R. Tekosky
David B. Sadwick
7 Tatro Tekosky Sadwick LLP
333 S. Grand Avenue, Suite 4270
8 Los Angeles, CA 90071

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT B

Mark Olson
CEO
Chemi-Source/MRM
2665 Vista Pacific Drive
Oceanside, CA 92056

James Robert Maxwell, Esq.
Rogers Joseph O'Donnell
311 California Street
Tenth Floor
San Francisco, CA 94104
Email: jrm@rjo.com
Tel: 415.956.2828
Fax: 415.956.6457

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT B

DYMATIZE ENTERPRISES, LLC.

Michael Casid
Dymatize Enterprises, LLC.
13737 N. Stemmons Fwy
Dallas, TX 75234

William F. Tarantino, Esq.
Morrison & Foerster LLP
425 Market St., Suite 3300
San Francisco, CA 94105

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT B

Healthwatchers, (DE) Inc.
NBTY, Inc.
Christine McInerney Esq.
Deputy General Counsel Litigation
2100 Smithtown Avenue
Ronkonkoma, NY 11779

Sidley Austin, LLP
Judith Praitis, Esq.
555 West Fifth Street
Suite 4000
Los Angeles, CA 90013

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT B

Richard H. Neuwirth, Esq.
Chief Legal Officer
Twinlab Corporation
632 Broadway, Suite 201
New York, NY 10012

Mr. Gregory T. Grochoski
Twinlab Corporation
3133 Orchard Vista Drive S.E.
Grand Rapids, MI 49546

Sidley Austin, LLP
Judith Praitis, Esq.
555 West Fifth Street
Suite 4000
Los Angeles, CA 90013

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT B

THE ISOPURE COMPANY LLC

Hal Katz
The Isopure Company, LLC
195 Engineers Road
Hauppauge, NY 11788

William F. Tarantino, Esq.
Morrison & Foerster LLP
425 Market St., Suite 3300
San Francisco, CA 94105

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT B

ISS Research, LLC
Mr. Ron McAfee
President
5400 W.T. Harris Blvd.
Suite L
Charlotte, NC 28269

Allain C. Andry, Esq.
Robinson Bradshaw & Hinson
101 North Tryon Street, Suite 1900
Charlotte, NC 28246

Sidley Austin, LLP
Judith Praitis, Esq.
555 West Fifth Street
Suite 4000
Los Angeles, CA 90013

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT B

Lee Labrada
Kyle Workman
David Ramirez
Labrada Bodybuilding Nutrition, Inc.
333 Northpark Central Drive
Houston, TX. 77073

Kenneth E. Chyten, Esq.
LAW OFFICES OF KENNETH E. CHYTEN
300 East Esplanade Drive, Suite 900
Oxnard, CA. 93036

ATTACHMENT B

Natural Organics Laboratories, Inc.

Philip M. Kazin
General Counsel
Natural Organics, Inc.
548 Broadhollow Road
Melville, NY 11747

With a copy to:

Trenton H. Norris
Sarah Esmaili
Arnold & Porter LLP
3 Embarcadero Center, Suite 700
San Francisco, CA 94111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT B

Vital Pharmaceuticals, Inc. d/b/a VPX/Redline
Ms. Kalina Pagano, Esq.
1600 North Park Drive
Weston, Florida 33326

Katten Muchin Rosenman LLP
Christina L. Costley, Esq.
2029 Century Park East, Suite 2600
Los Angeles, CA 90067