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10 AS YOU SOW

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 CITY AND COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

13 AS YOU SOW,
14 Plaintiff,
15 vs.
16 IDEA SPHERE, INC., and TWINLAB
17 CORPORATION
18 Defendants.

19 **Case No. CGC-07-468381**
20
21 **[PROPOSED] CONSENT JUDGMENT**
22 **AS TO DEFENDANTS IDEA**
23 **SPHERE, INC. AND TWINLAB**
24 **CORPORATION**

25 This Consent Judgment is entered into by and between As You Sow (“Plaintiff”), and Idea
26 Sphere, Inc., a Michigan corporation, and its wholly-owned subsidiary Twinlab Corporation, a
27 Delaware corporation (collectively “Defendant”), solely in Defendant’s capacity as manufacturer,
28 distributor or seller of the Nature’s Herbs branded product line. This Consent Judgment shall be
effective upon entry (the “Effective Date”) by the court. Plaintiff and Defendant (each a “Party”
and collectively, “the Parties”) agree to the terms and conditions set forth below. This Consent
Judgment applies solely to products manufactured, distributed or sold under the Nature’s Herbs
brand and set forth on Exhibit A (or properly added to Exhibit A subsequent to the Effective
Date, as more fully described herein below), and does not apply to any other branded product
lines manufactured, distributed or sold by Defendant.

1 **1. INTRODUCTION**

2 **1.1** Plaintiff is a Section 501(c)(3) non-profit foundation dedicated to, among other
3 causes, the protection of the environment, the promotion of human health, the improvement of
4 worker and consumer rights, environmental education, and corporate accountability. Plaintiff is
5 based in San Francisco, California and incorporated under the laws of the State of California.

6 **1.2** Defendant directly or indirectly sells finished herbal products for ingestion to
7 California consumers under the Nature’s Herbs branded product line. Plaintiff alleges that
8 certain of the products contain lead, a chemical listed by the State of California as known to
9 cause cancer and reproductive toxicity pursuant to the Safe Drinking Water and Toxic
10 Enforcement Act of 1986 (“Proposition 65”), California Health and Safety Code § 25249.5 et
11 seq.; Title 22, California Code of Regulations § 12000 et seq. For purposes of this Consent
12 Judgment only, each of the products is deemed to be a “food” within the meaning of Title 22,
13 California Code of Regulations § 12501.

14 **1.3** The specific Nature’s Herb’s products Plaintiff alleges contain lead and which are
15 covered by this Consent Judgment as of the Effective Date are set forth in Exhibit A hereto (the
16 “Products”). Any products not set forth in Exhibit A hereto are not subject to the injunctive
17 provisions herein, except as specifically provided in Section 9: *New Products*, and are not
18 covered by the release of liability set forth in Section 6 herein.

19 **1.4** Pursuant to Health & Safety Code § 25249.8: (a) on February 27, 1987, the State
20 of California listed the chemical lead as a chemical known to cause reproductive toxicity; and (b)
21 on October 1, 1992, the State of California listed the chemicals lead and lead compounds as
22 chemicals known to cause cancer.

23 **1.5** Beginning on August 7, 2007 and again on March 3, 2008, Plaintiff served on
24 Defendant and each of the appropriate public enforcement agencies “60-Day Notices” that
25 provided Defendant and the public enforcement agencies with a notice alleging that Defendant
26 was in violation of Proposition 65 for failing to warn the purchasers and individuals using the
27 Products that the use of the Products exposes them to certain chemicals known to the State of
28 California to cause cancer and/or reproductive toxicity (each, a “60-Day Notice”). A copy of

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1 each such 60-Day Notice issued to Defendant is attached hereto as Exhibit B. Defendant
2 stipulates for the purpose of this Consent Judgment only that the 60-Day Notices sent to it are
3 adequate to comply with Title 22, California Code of Regulations §12903.

4 **1.6** On October 19, 2007, Plaintiff filed a Complaint (the “Action”) in San Francisco
5 Superior Court, alleging violations of Proposition 65. Plaintiff brings the Action in the public
6 interest. Plaintiff has provided 60-Day Notice(s) to Defendant and the appropriate public
7 enforcement agencies and none of the public enforcement agencies has commenced and begun
8 diligently prosecuting an action against Defendant for such alleged violations.

9 **1.7** For purposes of this Consent Judgment, each Party stipulates that venue is proper
10 and that this Court has subject matter jurisdiction over the allegations contained in the Action.
11 Defendant stipulates it employs ten (10) or more employees and employed ten (10) or more
12 employees for one year prior to the date of the first 60-Day Notice Letter. The Parties enter into
13 this Consent Judgment to settle disputed claims between them and to avoid prolonged litigation.
14 By execution of this Consent Judgment, Defendant does not admit any facts, violations of law,
15 conclusions of law, the applicability of Proposition 65, or the applicability or violation of any
16 other law or standard governing warnings or disclosures in connection with the manufacture,
17 packaging, labeling, distribution and/or sale of the Products. Except for the stipulations made in
18 Sections 1.5 and 1.7 by Defendant, nothing in this Consent Judgment shall be construed as an
19 admission by Defendant of any fact, issue of law, conclusion of law, or violation of law, nor shall
20 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
21 of any fact, issue of law, conclusion of law, or violation of law. Except for the stipulations made
22 in this Section 1.7 by Plaintiff, nothing in this Consent Judgment shall be construed as an
23 admission by Plaintiff of any fact, issue of law, conclusion of law, or violation of law, nor shall
24 compliance with this Consent Judgment constitute or be construed as an admission by Plaintiff of
25 any fact, issue of law, conclusion of law, or violation of law.

26 **1.8** Except as expressly provided herein, nothing in this Consent Judgment shall
27 prejudice, waive or impair any right, remedy or defense any Party may have in any other or
28 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,

1 responsibilities, and duties of any Party to this Consent Judgment. This Consent Judgment is a
2 full and final settlement of all claims that were raised in the Action, or which could have been
3 raised in the Action arising out of the facts or conduct alleged therein.

4 **2. INJUNCTIVE PROVISIONS**

5 **2.1 Defendant’s Duty To Ascertain The Lead Content of Products On Or Before**
6 **Sixty Days Following the Effective Date.** On or before sixty (60) days following the Effective
7 Date, Defendant shall ascertain the concentration of lead in each of the Products as follows.

8 **2.1.1 Lead Testing Protocol.** To ascertain a Product’s concentration of lead,
9 Defendant shall test the Product (or rely on testing of the Product by others provided it is
10 undertaken in the manner set forth herein), using inductively coupled plasma mass spectrometry
11 (“ICP-MS”) under the protocol set forth in EPA Method 6020 as set forth in this Section 2.1.

12 **2.1.2 Additional Testing Protocols.** In the event that equally or more accurate
13 testing methods are developed or identified and accepted by the scientific community as accurate
14 enough to allow for detection and quantification of lead to ascertain compliance under this
15 Consent Judgment, any Party shall have the right to move the court to modify this Consent
16 Judgment as set forth in Section 8 herein, to allow testing by such equally or more accurate
17 testing method in addition to the methods authorized herein.

18 **2.1.3 Approved Laboratories.** Product or raw material testing may be
19 undertaken at Defendant’s in-house laboratories or by third-party testing laboratories; however,
20 all third-party laboratory testing shall be performed only at laboratories that are certified,
21 accredited, or registered by an agency of the United States, Canada, California or another State of
22 the United States or Province of Canada, including but not limited to the U.S. Environmental
23 Protection Agency, the U.S. Food and Drug Administration, or the California Department of
24 Health Services, for the purposes of administering the specific protocol used in such testing. If a
25 given agency does not certify specific protocols for testing for lead in dietary supplements, the
26 certification, accreditation or registration customarily bestowed upon laboratories testing dietary
27 supplements or ingredients in dietary supplements for lead in accordance with that agency’s
28

1 standards shall be required; if no such agency standards exist specifically for dietary supplements,
2 then the standards for foods shall be required.

3 **2.1.4 Sampling Protocol For Lead Content.** In fulfilling its duty to ascertain
4 the concentration of lead in each Product, Defendant may at its option, test (or rely on testing of
5 the Product by others) Representative Samples of the finished Products, or test (or rely on testing
6 of raw materials by others) Representative Samples of each of the raw materials comprising the
7 finished Product(s). Any results relied upon must use the analytical methods and sampling
8 requirements specified herein, except that a Defendant (or a laboratory conducting tests for
9 Defendant) may modify or adjust an analytical method if necessary to ensure accurate results in
10 light of the nature, composition, quantity, or other characteristic of the test specimen, the nature
11 of the test, or the specific equipment being used to conduct the test so as to enhance the quality
12 and reliability of the test results. If Defendant (or a laboratory conducting tests for Defendant)
13 modifies or adjusts any analytical method specified in this Consent Judgment, in the event of an
14 enforcement action by Plaintiff under this Consent Judgment contesting such modification or
15 adjustment, Defendant shall bear the burden of showing by a preponderance of the evidence that
16 the modification or adjustment was (a) necessary, appropriate and reasonable under the
17 circumstances; and (b) fully consistent with generally accepted scientific principles and practices
18 concerning analytical testing and test methods for Metals in foods, including dietary supplements.

19 **2.1.5 Representative Sampling.**

20 (a) Finished Products. “Representative Sampling” as used herein shall mean with respect
21 to the testing of finished Products, any of the following, at Defendant’s option: (a) testing of two
22 (2) or more samples, each from a different final Product of the most recent manufacturing,
23 labeling or processing lot or batch (“Manufacturing Lot”) of that Product; or (b) testing of one (1)
24 sample from the most recent Manufacturing Lot of a Product, provided that the one sample
25 actually tested is a composite of three (3) or more samples taken from three (3) or more final
26 Products from such Manufacturing Lot of that Product. Each of the three (3) or more samples
27 taken from three (3) or more final Products must be equal to the other samples (e.g., 4 capsules
28 taken from each of three final Products, or 1 gram taken from each of three final Products).

1 (b) Raw Materials. “Representative Sampling” as used herein shall mean with respect to
2 the testing of raw material, testing of one (1) or more samples from the most recent shipping lot
3 received by Defendant of each raw material comprising the Product, provided that the sample
4 actually tested is a composite of three (3) or more samples from the most recent shipping lot of
5 that raw material. Each of the three (3) or more raw material samples which comprise the
6 composite sample actually tested shall be equal to the other samples.

7 (c) First Two Year’s Frequency of Sampling. During each of the two years after the
8 Effective Date, for purposes of documenting compliance with Sections 2.2, 2.4 and 9 of this
9 Consent Judgment after sixty (60) days from the Effective Date, Defendant shall conduct (or have
10 conducted on its behalf) Representative Sampling of each Product meeting the definition of either
11 Section 2.1.5(a) or 2.1.5(b), or any combination of the two, as Defendant shall elect in its sole
12 discretion. The Parties agree that this frequency of Representative Sampling of each Product for
13 the first two years after the Effective Date shall be the minimum amount of sampling required
14 under this Consent Judgment. Defendant shall retain laboratory test data documenting the
15 foregoing Representative Sampling with respect to each Product Defendant ships for sale to
16 California between the Effective Date and the second anniversary of the Effective Date. Such
17 laboratory test data for the initial two year testing period shall be retained for at least four years
18 from the date of testing.

19 (d) Sampling Frequency After Second Anniversary of Effective Date. After the second
20 anniversary of the Effective Date, Defendant shall conduct (or have conducted on its behalf)
21 Representative Sampling on raw materials or finished Products, as the case may be, but
22 Defendant may adjust the frequency of the sampling regime set forth in Section 2.1.5(c). Any
23 adjustments to the sampling regime shall be sufficient to allow Defendant to continue to
24 accurately determine levels of lead in Products or in raw materials. Any adjustments to the
25 sampling regime shall be based upon Defendant’s consideration of the following factors: (i)
26 existing data, (ii) the variability of lead levels in a raw material or in a Product, as documented
27 through testing, (iii) the predictability of the distribution of the range of lead levels in a raw
28 material, based on prior laboratory test data, (iv) the amount of a raw material used in a finished

1 Product, and (v) other relevant considerations. In any proceeding to enforce this Consent
2 Judgment, Defendant bears the burden of showing by a preponderance of the evidence that any
3 testing regime adopted under this Section 2.1.5(d) is reasonable and is sufficient to accurately
4 determine lead levels in raw materials or finished Products. This Section 2.1.5(d) governs the
5 frequency of sampling, and does not alter the definitions of Representative Sampling set forth in
6 Sections 2.1.5(a), or (b), or the testing protocols set forth herein. Defendants are not limited to
7 providing only Representative Sampling data to Plaintiff in the event Plaintiff conducts
8 compliance monitoring under Section 2.1.6 or otherwise moves to enforce this Consent Judgment.

9 **2.1.6 Compliance Monitoring.** At any time following 60 days after the
10 Effective Date, Plaintiff may request that Defendant provide, within thirty-five (35) days of the
11 date of its request, documentation supporting the sale in California of any Product without the
12 health hazard warnings specified in this Consent Judgment. For the first two years after the
13 Effective Date, such requests may be made with respect to as many as twenty-five (25) percent,
14 annually, of the number of Products listed on Defendant's then current list of Products subject to
15 this Consent Judgment, up to a maximum of twenty (20) requests in total for the year, concerning
16 up to twenty (20) different Products in that year. After year two after the Effective Date, Plaintiff
17 may request information on no more than ten (10) percent, annually, of the number of Products
18 listed on Defendant's then current list of Products subject to this Consent Judgment, up to a
19 maximum of ten (10) requests in total for the year, concerning up to ten (10) different Products in
20 that year. After year three after the Effective Date, Plaintiff shall not be entitled to request
21 information pursuant to this Section 2.1.6, unless a violation of this Consent Judgment previously
22 was established within the three years preceding the date of the Plaintiff request, in which case
23 Plaintiff shall be entitled to tender up to twelve (12) requests in total for information respecting
24 up to twelve (12) different Products for up to one more year after the date of Plaintiff's request.
25 For any Product for which Plaintiff's request for such documentation is not provided within sixty
26 (60) days of the date of the request, such Product will be deemed sold in violation of this Consent
27 Judgment as to all sales in California of that Product after the date of Plaintiff's request through
28 the date upon which such documentation is received by Plaintiff and therefore will be subject to

1 the provisions of Section 3.1; provided, however, that Defendant’s mere contesting of any
2 assertion by Plaintiff concerning inadequacies in the documentation produced to Plaintiff shall
3 not, in and of itself, be deemed a violation of this Section 2.1.6. For Plaintiff to establish a
4 violation of this Section, the documentation provided or other documentation must show that a
5 health hazard warning was required under this Consent Judgment. Violations of this Section 2.1.6
6 may be enforced as specified hereinbelow and are not exclusive of other remedies, if any,
7 available to Plaintiff.

8 **2.1.7 Limited Exemptions from Testing.** Defendant need not test (or have
9 tested on its behalf) all excipients, fillers, flavors, colors, binders or other ingredients of uniform
10 manufacture or consistently uniform high purity (“Standardized Ingredients”) if it reasonably and
11 in good faith believes, after conducting the research and analysis described below, that it can
12 demonstrate, with admissible evidence, such Standardized Ingredients do not contain lead at
13 levels that might cause or contribute to a violation of this Consent Judgment. Defendant’s good
14 faith belief shall be based on periodic laboratory test data, vendor certifications, or other such
15 reasonable and appropriate information including consideration of the reliability and consistency
16 of the supplier, the nature of the ingredient, the amount used and other relevant scientific factors.
17 Defendant periodically shall monitor and evaluate such Standardized Ingredients for lead levels.
18 In the event that Plaintiff should move to enforce this Consent Judgment, Defendant bears the
19 burden of establishing by a preponderance of the evidence that any failure to test a Standardized
20 Ingredient for lead content was reasonable and in good faith, and must produce all such
21 supporting evidence in the context of the meet and confer process concerning enforcement of this
22 Consent Judgment contemplated under Section 8.1 herein. Defendant’s failure to test a
23 Standardized Ingredient for lead content, in the absence of a reasonable and good faith belief that
24 such ingredient does not contain lead at levels that might cause or contribute to a violation of this
25 Consent Judgment, shall constitute a material breach of this Consent Judgment and be subject to
26 stipulated civil penalties as provided for herein if such failure to test causes or contributes to a
27 failure to provide a warning when required under Section 2.2 or causes or contributes to a
28 violation of Section 2.4 of this Consent Judgment.

1 **2.1.8 Product or Ingredient Specifications.** On or before the date that is sixty
2 (60) days after the Effective Date, Defendant shall establish, at its option, either: (a) specifications
3 for the lead content of all raw materials used in the Products, or (b) specifications for the lead
4 content in finished Products. Defendant shall not use raw materials which fail to meet the lead
5 specifications Defendant established for raw materials used in the manufacture of Products.
6 Defendant shall not ship for sale or use in California Products which fail to meet Defendant's
7 specifications for lead content in finished Products, unless such Products meet all terms of this
8 Consent Judgment, including the warning obligations in Section 2 and Section 9. Defendant may
9 from time to time adjust specifications for raw materials or for finished Products.

10 **2.1.9 Purchase of Testing Equipment.** On or before the date that is sixty (60)
11 days after the Effective Date, Defendant shall commence acquisition of an Inductively Coupled
12 Plasma Mass Spectrometer Varian 820 ICP-MS (Three Phase), re-circulating chiller, SPS3
13 Autosampler, computer, monitor, software included and related digestion block, and Cary 100
14 Bio Spectrophotometer Series II Detector plus Cary WinUV Bio Suite operating software,
15 Reference Standards and NIST standards for USP testing for purposes of providing in-house
16 testing for lead. In compliance with this Consent Judgment, Defendant may utilize outside
17 laboratories as well.

18 **2.2 Provision of Clear and Reasonable Warnings.**

19 **2.2.1 On-Product Warnings.** On or before the date that is sixty (60) days
20 following the Effective Date, Defendant shall permanently cease and no longer ship for sale or
21 use in California any Products (as defined in Sections 1.3 and 9.1) which require a warning under
22 the terms of this Consent Judgment, unless each individual Product (in the form intended for sale
23 to the end-user) bears one of the warning statements specified below on its individual unit label or
24 unit packaging:

25 (a) (i) Subject to Sections 2.3 and 2.4, if use or consumption of the Product in accordance
26 with Defendant's label directions results in an exposure exceeding 0.50 micrograms/day
27 of lead, then the warning shall state the following:
28

1 **WARNING: The use of this product will expose you to lead, a substance known to the State**
2 **of California to cause birth defects or other reproductive harm.**

3 (ii) Subject to Sections 2.3 and 2.4, if use or consumption of the Product in accordance
4 with Defendant's label directions results in an exposure exceeding 0.50 micrograms/day of lead,
5 and such use or consumption of the Product also results in exposure to one or more additional
6 reproductive toxicants for which a warning is required to comply with Proposition 65, then the
7 warning shall state the following:

8 **WARNING: The use of this product will expose you to lead, and other substances known**
9 **to the State of California to cause birth defects or other reproductive harm.**

10 (iii) Subject to Sections 2.3 and 2.4, if use or consumption of the Product in accordance
11 with Defendant's label directions results in an exposure exceeding 0.50 micrograms/day of lead,
12 and such use or consumption of the Product also results in exposure to one or more carcinogens
13 for which a warning is required to comply with Proposition 65, then the warning shall state the
14 following:

15 **WARNING: The use of this product will expose you to lead, and other substances known**
16 **to the State of California to cause cancer and birth defects or other reproductive**
17 **harm.**

18 (b) The warning statement shall be prominent and displayed on the label or packaging of
19 each Product with such conspicuousness, as compared with other words, statements, or designs,
20 so as to render it likely to be read and understood by an ordinary individual prior to purchasing or
21 using the Product. The warning statement shall be printed on the label or packaging in a font size
22 no smaller than any other precautionary statements or warnings printed on the Product's label or
23 packaging.

24 **2.2.2 Additional Warnings Concerning Mail Order & Internet Sales.** If a
25 Defendant sells a Product that requires a warning under this Consent Judgment, by mail order or
26 over the Internet to a purchaser in the State of California on or after the date that is sixty (60) days
27 after the Effective Date, the following additional requirements shall apply.

28

1 (a) For such mail order sales, the warning language required under this Consent Judgment
2 shall also be included in the mail order catalogue, either on the same page as any order form, or
3 on the same page(s) upon which the Product's price is listed, in the same type size as the
4 surrounding, non-heading text (this requirement shall be applicable only to all catalogues
5 featuring Products printed after the Effective Date). If Defendant determines, after a mail order
6 catalogue is printed, that a Product featured therein requires a warning under this Consent
7 Judgment, Defendant may provide a warning in compliance with Section 2.2.1 until the next
8 printing of a mail order catalogue featuring that Product.

9 (b) For such Internet sales, the warning language required under this Consent Judgment
10 shall be displayed in the same type size as the surrounding, non-heading text, either: (a) on the
11 same page upon which the Product is displayed or referenced; (b) on the same page as the order
12 form for the Product; (c) on the same page as the price for the Product is displayed; or (d) in a
13 dialogue box (which cannot be suppressed by "pop up" box blocking software) which appears
14 when a California address for delivery is provided by the consumer, so long as the dialogue box
15 appears prior to the completion of the internet sale and requires the consumer to affirmatively
16 accept receipt of the warning set forth in the dialogue box (which shall be displayed in the same
17 type size as the surrounding, non-heading text on the screen at the time of the appearance of the
18 dialogue box), as a condition precedent to completing the sale.

19 **2.3 Exceptions To Warning Requirements.** No Product that meets each of the
20 following criteria shall require a warning pursuant to this Consent Judgment:

21 **2.3.1 For Lead Warnings, Exposure Below "No Observable Effect Level."**

22 Use or consumption of a Product causes total daily exposure¹ to lead of less than 0.5 micrograms
23 when consumed or used in accordance with the Defendant's label directions, excluding any
24 naturally occurring lead, as defined for purposes of this Consent Judgment in Section 2.3.2
25 ("Naturally Occurring Lead"), in such Product. Prior to shipment for sale to California
26

27
28 ¹ For purposes of this Consent Judgment only, the term "exposure" is deemed to mean
"ingestion", consistent with Title 22, Cal. Code Regs., section 12102(i) (which defines the term
"expose" as "to cause to ingest....").

1 consumers, Defendant shall provide consumer use instructions on the label or packaging of each
2 individual Product unit (in the form intended for sale to the end-user). If the consumer use
3 instructions include a range of consumption levels (e.g., “take 2 to 4 tablets daily”), then for
4 purposes of determining compliance with Sections 2.2, 2.4, 9 and otherwise under this Consent
5 Judgment, the highest dose instructed shall be the dose.

6 **2.3.2 “Naturally Occurring” Allowance For Lead for Products Shipped for**
7 **Sale After Sixty Days Following The Effective Date.**

8 (a) Initial Naturally Occurring Lead Level. Unless a Product contains a warning in
9 compliance with this Consent Judgment, the initial Naturally Occurring Lead level in any Product
10 subject to this Consent Judgment Defendant ships for sale or use in California after the date that is
11 sixty (60) days following the Effective Date, shall not exceed a concentration that will result in
12 2.25 micrograms lead ingested/day, assuming the Product is used or consumed in accordance with
13 the Defendant’s consumer use instructions. Products where the concentration results in lead
14 levels that exceed: (i) this initial 2.25 micrograms ingested level or (ii) Products which exceed
15 any future Naturally Occurring Lead level subsequently established pursuant to this Consent
16 Judgment (plus, in either the case of (i) or (ii), an additional 0.5 micrograms lead as allowed by
17 regulation and under Section 2.3.1), shall be subject to the warning requirements set forth in
18 Sections 2.2.1, 2.2.2 and 9 herein, unless Defendant can show by a preponderance of the evidence
19 that all lead in such Products (except 0.5 micrograms ingested in a daily dose) is naturally
20 occurring per 22 Cal. Code Reg. § 12501. If Defendant in the future elects to make this showing
21 that more than 2.25 micrograms of lead is naturally occurring, Defendant agrees to provide all
22 information on which it relies to support such a showing to Plaintiff in the context of the meet and
23 confer process concerning enforcement of this Consent Judgment contemplated under Section 8.1
24 herein. Defendant’s failure to produce complete information during the meet and confer process,
25 or Defendant’s’ failure to establish to the Court, based on such information, by a preponderance
26 of the evidence, that lead in excess of 0.5 micrograms in a daily dose, plus Naturally Occurring
27 Lead, is naturally occurring under the criteria in 22 Cal. Code Reg. § 12501 shall constitute a
28 material breach of this Consent Judgment and be subject to stipulated civil penalties as provided

1 for herein if a Product which requires a health hazard warning under this Consent Judgment was
2 sold in California without such warning. Nothing in this Section 2.3.2 constitutes a waiver of
3 Defendant's' right to establish, in accordance with the procedures set forth in Sections 2.3.2 and
4 8.1, that levels of metals other than lead are naturally occurring under the criteria of 22 Cal. Code
5 Reg. § 12501. The Parties agree that the initial 2.25 micrograms Naturally Occurring Lead level
6 is the result of negotiations and a review of the available information and shall be applicable to
7 the Products subject to this Consent Judgment and shall have no application to other products.

8 (b) Evaluation of Future Naturally Occurring Lead Levels. In recognition of the
9 possibility that the "lowest level feasible" of lead may change over time, the Parties agree that for
10 at least three years after the Effective Date, Defendant shall have the right to tender a statement of
11 determination to AYS as to whether an adjustment to the Naturally Occurring Lead level can be
12 supported by a preponderance of the evidence. If tendered, such statement of determination shall
13 be tendered to AYS on or before April 15th for the years 2009, 2010 and 2011. Such a
14 determination respecting the Naturally Occurring Lead level shall be made in good faith and be
15 based on Representative Sampling and "Feasibility." "Feasibility" for purposes of this Consent
16 Judgment shall mean consideration of the following: (1) the availability and reliability of a
17 supply to Defendant of raw materials in question; (2) the reasonable cost to Defendant of
18 Products or raw materials therein; (3) any resulting unreasonable increase in cost to a Defendant
19 to procure a Product or raw materials with lower levels of lead; (4) performance characteristics,
20 including formulation, performance, safety, taste, efficacy and stability, of any raw materials or
21 finished Product; (5) the lawfulness of alternatives (no alternative shall result in a violation of
22 law, or a breach of a standard of identity); and (6) other relevant and reasonable considerations.
23 If upon determination of Defendant a change in the Naturally Occurring Lead level is warranted
24 under the criteria above, then Defendant within sixty (60) days of the statement date may proceed
25 to modify this Consent Judgment in accordance with Section 8 herein. Defendant's obligations
26 under this Section 2.3.2(b) are without prejudice to any rights of Plaintiff under Section 8 or
27 otherwise herein. If either Party seeks to modify the initial or any subsequently established
28 Naturally Occurring Lead level as defined herein, such modification shall only be effective upon

1 an order by the Court, after a noticed motion, notice of which motion shall be served on the
2 Office of the Attorney General at least forty-five (45) days prior to the hearing date, and which
3 motion shall include the information supporting the request for modification.

4 (c) Defendant also shall be entitled to exclude from the calculation of the daily lead
5 exposure the amount of naturally occurring lead in the following non-herbal ingredients only, if
6 used in a Product: calcium, ferrous fumarate, zinc oxide, magnesium oxide, magnesium chloride,
7 magnesium hydroxide, zinc gluconate and potassium chloride. The amount of lead in each of
8 these ingredients deemed naturally occurring shall be conclusively and irrefutably presumed to be
9 the amount of lead that would be deemed naturally occurring under the consent judgment entered
10 on November 11, 1998 in *People v. Warner Lambert*, San Francisco Superior Court Case No.
11 984403.

12 2.3.3 Conditions Under Which "Naturally Occurring" Allowance For Lead

13 **Applies.** For purposes of compliance with this Agreement, Defendant shall be required to
14 adhere to 22 Cal. Code Reg. § 12501 and Defendant shall be entitled to exclude the amount of
15 lead specified in Section 2.3.2 pursuant to the provisions of this Agreement. Defendant shall bear
16 the burden of proof in establishing, by a preponderance of the evidence that, with respect to each
17 Product unit subject to an enforcement proceeding, the conditions specified in this Section 2.3.3
18 have been satisfied.

19 2.4 Ban on Sales of Products Causing Exposures to Lead in Excess of 10

20 **Micrograms Per Day.** No Product subject to this Consent Judgment may be shipped by
21 Defendant for sale in the State of California after sixty (60) days following the Effective Date if,
22 when used or consumed in accordance with the Defendant's label directions, it causes an
23 exposure to lead in excess of ten (10.0) micrograms/day.

24 3. CIVIL PENALTIES

25 3.1 Stipulated Civil Penalties For Future Violations of This Agreement.

26 Proposition 65 provides for civil penalties of up to \$2500 per violation per day, pursuant to
27 California Health & Safety Code § 25249.7. In the event that after sixty (60) days following the
28 Effective Date Defendant violates Sections 2 or 9 herein, the Parties stipulate that Defendants

1 shall be liable for a stipulated civil penalty in the amount of \$10.00 per unit item sold in violation
2 of this Consent Judgment, unless the Defendant's actual per unit sale price to the buyer was less
3 than \$10.00, in which case the stipulated penalty shall be fifty percent (50%) of the sale price
4 Defendant received from the relevant buyer for the Products at issue. Total civil penalties
5 concerning all Products sold in violation of this Consent Judgment shall not exceed \$75,000 for
6 such violations in any calendar year. Plaintiff may establish such violation(s) hereunder by a
7 preponderance of the evidence upon a duly noticed motion in the San Francisco Superior Court
8 and subject to the provisions of Section 8 herein. Plaintiff shall remit 75% of this amount to the
9 State of California pursuant to Health & Safety Code § 25249.12(b).

10 **3.2 Civil Penalty Assessment.** In recognition of Defendant's commitment to
11 purchase product testing equipment pursuant to Section 2.1.9 above, Defendant shall pay a
12 reduced civil penalty in the amount of \$35,000 to Plaintiff, pursuant to Health & Safety Code
13 § 25249.7(b). Plaintiff shall remit 75% of this amount to the State of California pursuant to
14 Health & Safety Code § 25249.12(b).

15 **3.3 Payment & Capital Improvements in Lieu of Additional Civil Penalties.**

16 (a) Defendant shall make a payment in lieu of additional penalties in the amount of
17 \$215,000 to Plaintiff. Plaintiff shall forward at least one-half of these funds to California non-
18 profit groups to reduce exposures to toxic chemicals, and to increase consumer, worker and
19 community awareness of the health hazards posed by toxic chemicals. Any remaining funds shall
20 be deposited in the As You Sow Foundation Environmental Enforcement Fund and shall be used
21 to reduce exposures to toxic chemicals, and to increase consumer, worker and community
22 awareness of the health hazards posed by toxic chemicals. In deciding among the grantee
23 proposals, the As You Sow Board of Directors ("Board") takes into consideration a number of
24 factors, including: (1) the nexus between the alleged harm in the underlying case(s), and the grant
25 program work; (2) the potential for toxics reduction, prevention, remediation or education
26 benefits to California residents from the proposal; (3) the budget requirements of the proposed
27 grantee and the alternate funding sources available to it for its project; and (4) the Board's
28 assessment of the grantee's chances for success in its program work. Plaintiff shall ensure that all

1 funds will be disbursed and used in accordance with Plaintiff's mission statement, articles of
2 incorporation, and bylaws and applicable state and federal laws and regulations within one year of
3 receipt.

4 (b) Within sixty (60) days after the Effective Date, Defendant shall order and
5 commence the expenditure of at least \$242,000 for the acquisition, installation, calibration,
6 worker training, and related start up costs associated with the testing equipment identified in
7 Section 2.1.9.

8 **3.4 Penalties are not a credit.** No penalties paid herein shall be construed as a
9 credit against future new claims against Defendant.

10 **4. REIMBURSEMENT OF FEES AND COSTS**

11 **4.1 Reimbursement of Plaintiff's Investigative, Expert and Legal Fees and Costs.**

12 Defendant shall reimburse Plaintiff in the amount of \$47,000 for Plaintiff's reasonable
13 investigative, expert, and legal fees and costs incurred as a result of investigating and negotiating
14 a settlement in the public interest.

15 **5. PAYMENT OBLIGATIONS**

16 **5.1** Pursuant to Sections 3.2, 3.3 and 4.1 herein, Defendant agrees to remit the total
17 amount of \$297,000 to Plaintiff, payable to "As You Sow" (Employer Identification Number 94-
18 3169008) within fifteen (15) days of the Effective Date of this Consent Judgment.

19 **6. RELEASE OF LIABILITY**

20 **6.1 Release of Liability.** Plaintiff, on its own behalf, and on behalf of the general
21 public, waives all rights to institute or participate in, directly or indirectly, any claim or form of
22 legal action against Defendant, its officers, directors, employees, agents, attorneys,
23 representatives, shareholders, parents, subsidiaries, affiliates, divisions, predecessors, successors,
24 subdivisions, downstream distributors, downstream retailers, downstream customers, and
25 upstream suppliers (including manufacturers of the Products and manufacturers of the raw
26 materials of the Products) under Proposition 65 based upon Defendant's alleged failure to warn,
27 within the meaning of Proposition 65, about exposure to lead in any of the Products sold in
28 California or to California consumers on or before sixty (60) days after the Effective Date or

1 based on any other legal claim or theory that was or could have been alleged in the Action based
2 on the facts alleged in the Action.

3 **6.2 Release of Liability of Plaintiff.** Defendant waives all of its rights to institute any
4 claim, or form of legal action against Plaintiff, its officers, directors, employees, agents, attorneys
5 and representatives (the "Plaintiff Releasees") for all actions or statements made or undertaken by
6 the Plaintiff Releasees in the course of seeking enforcement of Proposition 65 through the Action.

7 **7. CONSENT JUDGMENT**

8 **7.1 Consent Judgment.** Upon execution of this Consent Judgment by all Parties,
9 Plaintiff shall promptly notice a Motion for Approval & Entry of Consent Judgment in the San
10 Francisco Superior Court pursuant to Title 11, Cal. Code of Regs. §3000, *et seq.* This Motion
11 shall be served upon all of the Parties to the Action and upon the California Attorney General's
12 Office. In the event that the Court fails to approve and order entry of the judgment, this Consent
13 Judgment shall become null and void upon the election of any Party as to them and upon written
14 notice to all of the Parties to the Action pursuant to the notice provisions herein. If this Consent
15 Judgment becomes null and void, or is not approved by the Court within one hundred and eighty
16 (180) days of its execution by all Parties, Plaintiff shall refund all sums paid by Defendant
17 pursuant to Sections 3.2, 3.3 and 4.1 within fifteen (15) days of written notice to Plaintiff by
18 Defendant that a refund is due. Defendant and Plaintiff shall use best efforts to support entry of
19 this Consent Judgment in the form submitted to the Office of the Attorney General. If the
20 Attorney General objects in writing to any term in this Consent Judgment, the Parties shall use
21 best efforts to resolve the concern in a timely manner and prior to the hearing on the motion to
22 approve this Consent Judgment. If the Parties cannot resolve an objection of the Attorney
23 General, then AYS and Defendant shall proceed with seeking entry of an order by the court
24 approving this Consent Judgment in the form originally submitted to the Office of the Attorney
25 General, or in such other form as the Parties shall mutually agree upon after consideration of any
26 comments of the Attorney General. If the Attorney General elects to file a notice or motion with
27 the Court stating that the People shall appear at the hearing for entry of this Consent Judgment so
28 as to oppose entry of the Consent Judgment, then a party may withdraw from this Consent

1 Judgment prior to the date of the hearing, with notice to all parties and the Attorney General, and
2 upon such notice this Consent Judgment shall be null and void and any sums paid hereunder shall
3 be returned to Defendant within fifteen (15) days of the date of the notice. If the Attorney
4 General files a notice of appeal of this Consent Judgment, then a party may withdraw from this
5 Consent Judgment within forty-five (45) days of the People's notice of appeal and this Consent
6 Judgment shall be null and void ab initio five (5) days after notice of the withdrawal and any
7 sums paid hereunder shall be returned to Defendant within fifteen (15) day of the date of voiding.

8 **7.2 Amendment To Complaint.** Upon the expiration of the 60-Day Notice issued on
9 or about March 3, 2008, and in the event that no public prosecutors have commenced diligent
10 prosecution against Defendants for such violations, the Complaint herein shall be deemed
11 amended to include all violations described in that 60-Day Notice.

12 **8. ENFORCEMENT AND MODIFICATION**

13 **8.1 Enforcement and Stipulated Civil Penalties.** In the event that a dispute arises
14 with respect to any of the provisions of this Consent Judgment, the Parties shall meet and confer
15 within twenty (20) days after any Party receives written notice of an alleged violation of this
16 Consent Judgment from another Party. In the event the affected Parties cannot resolve the
17 dispute, this Consent Judgment may be enforced pursuant to Code of Civil Procedure § 664.6 or
18 any other valid provision of law. The prevailing party in any dispute regarding compliance with
19 the terms of this Consent Judgment shall be awarded its reasonable fees and costs incurred, in
20 addition to any other relief otherwise ordered by the Court, including but not limited to civil
21 penalties assessed pursuant to Section 3 herein.

22 **8.2 Modification of Judgment - Grounds.** This Consent Judgment shall not
23 obligate Defendant to provide a health hazard warning (as described in Section 2 herein) for a
24 Product if that Product causes an exposure below the "No Significant Risk Level" or "Maximum
25 Allowable Daily Level," as those terms are defined in Proposition 65 and its implementing
26 regulations. Any such levels adopted in a final regulation or law pursuant to Proposition 65 after
27 the Effective Date shall become the standard under this Consent Judgment on the date of adoption
28 without need for formal modification of this Consent Judgment, but Defendant retains its rights

LAW OFFICES
ANDREW L. PACKARD
319 PLEASANT STREET PETALUMA CALIFORNIA 94952
TEL 707-763-7227 FAX 707-763-9227

1 and obligations under Section 2.3.2. to establish naturally occurring levels of lead. The Parties
2 acknowledge that new toxicological information or exposure assessments concerning hazardous
3 substances and testing methodologies are continuously becoming available, and that statutory and
4 regulatory standards applicable to the Products may evolve in the future. Accordingly, the Parties
5 agree that any Party may file a motion pursuant to § 664.6 of the California Code of Civil
6 Procedure, and under the conditions set forth below, move the Court for modification of the
7 warning requirement or any other term set forth in Section 2 herein on the grounds that (a) they
8 conflict with the applicable legal standards concerning the Products or any ingredient therein, or
9 (b) the warning requirement or any other term set forth in Section 2 herein are more stringent than
10 the warning requirements AYS agrees to after the Effective Date in an order, judgment or
11 settlement under Proposition 65 with respect to any dietary supplements that are substantially
12 similar to the Products herein. Absent good cause shown by Plaintiff, Plaintiff shall allow
13 modification of this Consent Judgment to permit Defendant to adhere to such less stringent
14 warning requirements. Any disputes regarding the issues set forth in this subsection shall be
15 resolved in accordance with the procedures set forth in Section 8.3 below.

16 **8.3 Modification of Judgment – Procedure.** In the spirit of cooperation and in the
17 interests of minimizing the investigative, expert and attorneys’ fees and costs associated with
18 such a motion, the Parties agree to meet and confer in good faith as follows. Prior to filing a
19 motion pursuant to Section 8.2 herein, the Party seeking to modify the judgment shall first
20 provide the non-moving Party and the California Attorney General’s Office with any legal or
21 scientific information upon which the motion would rely. The non-moving Party and the
22 California Attorney General’s Office shall be allowed a period of forty-five (45) days to review
23 that information and to provide the moving Party with its formal written response (the Attorney
24 General’s Office’s failure to respond to this submission shall not be construed in any manner to
25 reflect any particular view, on the part of the Attorney General’s Office, of this Consent Judgment
26 or of the applicable law or science). The Parties shall then meet and confer within twenty (20)
27 days of the non-moving Party’s written response. If, after meeting and conferring, the moving
28 Party elects to proceed with a motion to amend this Consent Judgment, it may do so with proper

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ANDREW L. PACKARD
319 PLEASANT STREET PETALUMA CALIFORNIA 94952
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1 notice to the other Party and the Attorney General's Office as required under the California Code
2 of Civil Procedure. Such a motion may be accompanied by scientific data, studies, written
3 declarations, and live testimony or discovery responses. In the event that the Court determines
4 that a Party seeking or opposing a motion to modify this Consent Judgment did so without
5 justification or failed to meet and confer in good faith prior to moving for such modification, the
6 other Party shall be awarded reasonable fees and costs incurred.

7 **9. NEW PRODUCTS.**

8 **9.1 New Product Testing Prior to Sale in California.** If, after the date that is sixty
9 (60) days after the Effective Date, Defendant elects to ship for sale in California any new herbal
10 products under the Nature's Herbs brand line, but not identified on Exhibit A hereto, Defendant
11 shall, before shipping the new product(s) for sale in California, conduct the testing set forth in
12 Section 2.1 and adhere to the requirements of this Consent Judgment with respect to such new
13 product(s). Failure to provide the warning if required under Section 2.2 shall be a violation of
14 this Consent Judgment subject to stipulated penalties in accordance with Section 3.1. Such new
15 Nature's Herbs branded herbal product(s) shall then be deemed Product(s) subject to all of the
16 terms of this Consent Judgment. Before the date that is sixty (60) days after the Effective Date,
17 Defendant may ship for sale to California customers new or reformulated products of the type set
18 forth in Section 1.2 that are not listed on Exhibit A, and the sales of such products shall not be
19 deemed in violation of any term of this Consent Judgment.

20 **9.2 Annual New Product Update List.** Commencing on April 15, 2009 and annually
21 on that date through and including April 15, 2011, Defendant shall provide Plaintiff with an
22 annual updated list of new Nature's Herbs branded Products Defendant shipped for sale or use in
23 California in the preceding calendar year for which Defendant has ascertained that warnings are
24 not required under this Consent Judgment. Defendant shall include, for each new Product
25 identified on the annual updated list, either: (a) at least one finished product test result
26 documenting the lead level in each new Product or (b) a calculation of the total lead level in the
27 Product, expressed in micrograms/day, based on Defendant's Representative Sampling data. If
28 Plaintiff cannot ascertain and in good faith inquires in writing as to whether a specific Product is a

1 new Product in a given year, Defendant shall promptly (and in any event within thirty-five (35)
2 days the date of AYS' request) reply to advise whether the Product is a new Product for that year
3 or is an existing Product.

4 **10. GOVERNING LAW**

5 **10.1 Governing Law.** The terms of this Consent Judgment shall be governed by the
6 laws of the State of California. This Consent Judgment shall not govern Products or products
7 sold to consumers or other persons outside the State of California.

8 **11. NOTICES**

9 **11.1 Notices.** All correspondence and notices required to be provided under this
10 Agreement shall be in writing and shall be sent by first class registered or certified mail, or via a
11 reputable overnight delivery service with a tracking mechanism, addressed as follows:

12 All correspondence to Plaintiff shall be mailed to:

13 Attn: Lawrence E. Fahn, Executive Director
14 As You Sow
15 311 California Street, Suite 510
16 San Francisco, CA 94104

With a copy to:

Andrew L. Packard, Esq.
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, CA 94952

16 All correspondence to Defendant shall be mailed to:

17 Idea Sphere, Inc.
18 Attn: General Counsel
19 632 Broadway, 11th Floor
20 New York, New York 10012

With a copy in each case to:

Judith M. Praitis, Esq.
Sidley Austin LLP
555 West 5th Street, 40th Floor
Los Angeles, CA 90013

21 **12. INTEGRATION AND MODIFICATION**

22 **12.1 Integration & Modification.** This Consent Judgment, together with the Exhibits
23 hereto which are specifically incorporated herein by this reference, constitutes the entire
24 agreement between the Parties relating to the rights and obligations herein granted and assumed,
25 and supersedes all prior agreements and understandings between the Parties. Except as set forth
26 in Section 8, this Consent Judgment may be modified only upon the written agreement of the
27 Parties to be bound. If any term of this Consent Judgment is found by the court to be invalid,
28 then such term shall be stricken and the remaining terms shall not be affected thereby. In the
interpretation hereof, references to general "Sections" (e.g., "Section 8") shall include all

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ANDREW L. PACKARD
319 PLEASANT STREET, PETALUMA, CALIFORNIA 94952
TEL 707-763-7227 FAX 707-763-9227

1 subsections within said section (e.g., Sections 8.1, 8.2 and 8.3), but references to specific
2 subsections (e.g., "Section 2.2.1") shall refer only to that specific subsection.

3 **13. COUNTERPARTS**

4 **13.1 Counterparts.** This Consent Judgment may be executed in counterparts, each of
5 which shall be deemed an original, and all of which, when taken together, shall constitute one and
6 the same document.

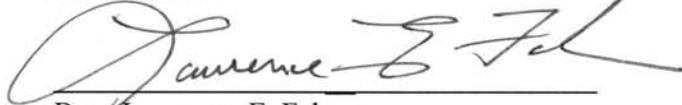
7 **14. AUTHORIZATION**

8 **14.1 Authorization.** The undersigned are authorized to execute this Agreement on
9 behalf of their respective parties and have read, understood, and agree to all of the terms and
10 conditions of this Agreement.

11 **IT IS SO STIPULATED:**

12 DATED: 3/27/08

AS YOU SOW



By: Lawrence E. Fahn
Executive Director

16 DATED: _____

IDEA SPHERE, INC.

By: Mark A. Fox
President

20 DATED: _____

TWINLAB CORPORATION

By: Mark A. Fox
President

25 **IT IS SO ORDERED:**

26 DATED: _____

Judge of the Superior Court

27 EXHIBIT A – Nature’s Herbs Product List

28 EXHIBIT B - Notices of Proposition 65 Violations

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2 subsections (e.g., "Section 2.2.1") shall refer only to that specific subsection.

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6 the same document.

7 **14. AUTHORIZATION**

8 **14.1 Authorization.** The undersigned are authorized to execute this Agreement on
9 behalf of their respective parties and have read, understood, and agree to all of the terms and
10 conditions of this Agreement.

11 **IT IS SO STIPULATED:**

12 DATED: _____ AS YOU SOW

13
14 _____
By: Lawrence E. Fahn
Executive Director

15
16 DATED: March 27, 2008

IDEA SPHERE, INC.

17 
18 _____
By: Mark A. Fox
President

19
20 DATED: March 27, 2008

TWINLAB CORPORATION

21 
22 _____
By: Mark A. Fox
President

23
24 **IT IS SO ORDERED:**

25 DATED: _____

26 _____
Judge of the Superior Court

27 EXHIBIT A – Nature’s Herbs Product List

28 EXHIBIT B - Notices of Proposition 65 Violations

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Exhibit A

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TEL 707-763-7227 FAX 707-763-9227

Name of Product	Name of Product
Nature's Herbs Dandelion-Goldenseal Comb. (100)	Nature's Herbs Eyebright (100)
Nature's Herbs Elderberry Echinacea/G.S. Comb. (100)	Nature's Herbs Garlic-Cayenne Comb. (100)
Nature's Herbs Red Raspberry Comb. (100)	Nature's Herbs Eleutherococcus Root (100)
Nature's Herbs Femchange (100)	Nature's Herb's Goldenseal Herb (100)
Nature's Herbs Black Walnut (100)	Nature's Herbs White Willow Bark (100)
Nature's Herbs Burdock Root (100)	Nature's Herbs Black Cohosh-Power (60)
Nature's Herbs Butchers Broom (100)	Nature's Herbs Echinacea-Power (60)
Nature's Herbs Cayenne (100)	Nature's Herbs St. Johns Power 0.3% Super Sz (180)
Nature's Herbs Dandelion Root (100)	Nature's Herbs Schizandra Fruit
Nature's Herbs Maca (100)	Nature's Herbs Arth Plus
Nature's Herbs Hawthorn (Flower, Leaf & Berry) (100)	Nature's Herbs Triphala
Nature's Herbs Nettle Leaf (100)	Nature's Herbs Forskohlii
Nature's Herbs Sarsaparilla (100)	
Nature's Herbs Valerian Root (100)	
Nature's Herbs Echinacea Angustifolia (100)	
Nature's Herbs Elderberry Flowers & Berries (100)	
Nature's Herbs Red Clover (100)	
Nature's Herbs Willowprin (30)	
Nature's Herbs Ginger-Peppermint Comb. (100)	
Nature's Herbs Hops-Valerian Comb. (100)	
Nature's Herbs Juniper Berry Comb. (100)	
Nature's Herbs Chickweed (100)	
Nature's Herbs Fenugreek & Thyme (100)	
Nature's Herbs Ginger Root (100)	
Nature's Herbs Goldenseal Root (100)	
Nature's Herbs Gotu Kola (100)	
Nature's Herbs Scullcap (100)	
Nature's Herbs Slippery Elm Bark (100)	
Nature's Herbs Yucca (100)	

EXHIBIT B



August 7, 2007

311 California Street, Suite 510
San Francisco, CA 94104
T 415.391.3212
F 415.391.3245
www.asyousow.org

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violator. The name of the violator covered by this notice is **IDEASPHERE, INC.** doing business as **TWINLAB, INC.** and **NATURE'S HERBS, INC.** ("IdeaSphere").

Chemicals. These violations involve exposures to lead and lead compounds from the products listed below. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Consumer products. The products that are the subject of this notice are herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas, liquid extracts and/or capsules that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by Ideasphere. The phrase "traditional patent medicines" above is used herein as defined by the California Department of Health Services: "herbal and patent medicines consisting of single or multiple herbal ingredients, including botanical, mineral and animal products, formulated into tablets, pills, powders and liquids." The products that are the subject of this notice include but are not limited to the following:



August 7, 2007

Page 2

Product

ARTH PLUS
ASTRAGALUS ROOT
CL-7 FORMULA
DONG QUAI ROOT
FO-TI
KOREAN GINSENG ROOT
SCHIZANDRA FRUIT
TRIPHALA
VALERIAN COMBINATION

Chemical

lead and lead compounds
lead and lead compounds

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products as recommended by the manufacturer. Accordingly, the consumer exposures have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or and dermal contact.

Duration of violations. Each of these ongoing violations has occurred on every day for at least August 7, 2006, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Andrew L. Packard, Esq.
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, CA 94952
Tel: 707-763-7227 Fax: 707-763-9227

Very truly yours,


Larry Fahn
Executive Director

Enclosure

CERTIFICATE OF MERIT

(Notice of Proposition 65 Violation on Ideasphere, Inc., dba Nature's Herbs)

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 7, 2007



Andrew L. Packard

Attachments (for Attorney General copy only)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, CA 94104.

On August 7, 2007, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the parties listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

David Van Andel, CEO
IdeaSphere, Inc.
doing business as TwinLab, Inc.
and Nature's Herbs, Inc.
3133 Orchard Vista Dr. SE
Grand Rapids, MI 49546

David Van Andel, CEO
IdeaSphere, Inc.
doing business as TwinLab, Inc.
and Nature's Herbs, Inc.
600 E. Quality Drive
American Fork, UT 84003

David Van Andel, CEO
IdeaSphere, Inc.
doing business as TwinLab, Inc.
and Nature's Herbs, Inc.
701 S 600 E
American Fork, UT 84003

On August 7, 2007, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Attn: Ed Weil, Deputy Attorney General
California Department of Justice
P.O. Box 70550
Oakland, CA 94612-0550

On August 7, 2007, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on August 7, 2007, at San Francisco, California,


Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

THE HONORABLE THOMAS J ORLOFF
ALAMEDA COUNTY DISTRICT ATTORNEY
1225 FALLON ST RM 900
OAKLAND CA 94612

THE HONORABLE WILLIAM RICHMOND
ALPINE COUNTY DISTRICT ATTORNEY
PO BOX 248
MARKLEEVILLE CA 96120

THE HONORABLE TODD D RIEBE
AMADOR COUNTY DISTRICT ATTORNEY
708 COURT ST STE 202
JACKSON CA 95642

THE HONORABLE MICHAEL RAMSEY
BUTTE COUNTY DISTRICT ATTORNEY
25 COUNTY CTR DR
OROVILLE CA 95965

THE HONORABLE JEFFREY TUTTLE
CALAVERAS COUNTY DISTRICT ATTORNEY
891 MTN RANCH RD
SAN ANDREAS CA 95249

THE HONORABLE JOHN POYNER
COLUSA COUNTY DISTRICT ATTORNEY
547 MARKET ST
COLUSA CA 95932

THE HONORABLE ROBERT KOCHLY
CONTRA COSTA COUNTY DISTRICT
ATTORNEY
PO BOX 670
MARTINEZ CA 94553

THE HONORABLE MICHAEL RIESE
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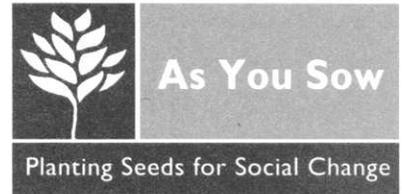
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151 W MISSION ST
SAN JOSE CA 95110

SAN FRANCISCO CITY ATTORNEY'S OFFICE
CITY HALL RM 234
SAN FRANCISCO, CA 94102

March 3, 2008



**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

311 California Street, Suite 510
San Francisco, CA 94104

T 415.391.3212

F 415.391.3245

www.asyousow.org

Dear Public Enforcement Agencies:

As You Sow (“AYS”) is a non-profit foundation organized under California’s Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California’s Safe Drinking Water & Toxic Enforcement Act of 1986 (“Proposition 65”), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS’ notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violator. The name of the violator covered by this notice is **IDEASPHERE, INC.** doing business as **TWINLAB CORPORATION** and **NATURE’S HERBS, INC.** (“IdeaSphere”).

Chemicals. These violations involve exposures to lead and lead compounds from the products listed below. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Consumer products. The products that are the subject of this notice are herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas, liquid extracts and/or capsules that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by Ideasphere. The phrase “traditional patent medicines” above is used herein as defined by the California Department of Health Services: “herbal and patent medicines consisting of single or multiple herbal ingredients, including botanical, mineral and animal products, formulated into tablets, pills, powders and liquids.” The products that are the subject of this notice include but are not limited to the following:

Product

Chemical

Dandelion-Goldenseal Combination

lead and lead compounds

Elderberry Echinacea/Goldenseal Combination

lead and lead compounds

Red Raspberry Combination

lead and lead compounds

Femchange

lead and lead compounds



Black Walnut	lead and lead compounds
Burdock Root	lead and lead compounds
Butchers Broom	lead and lead compounds
Cayenne	lead and lead compounds
Dandelion Root	lead and lead compounds
Maca	lead and lead compounds
Hawthorn (Flower, Leaf & Berry)	lead and lead compounds
Nettle Leaf	lead and lead compounds
Sarsaparilla	lead and lead compounds
Valerian Root	lead and lead compounds
Eyebright	lead and lead compounds
Echinacea Angustifolia	lead and lead compounds
Elderberry Flowers & Berries	lead and lead compounds
Red Clover	lead and lead compounds
Willowprin	lead and lead compounds
Ginger-Peppermint Combination	lead and lead compounds
Garlic-Cayenne Combination	lead and lead compounds
Hops-Valerian Combination	lead and lead compounds
Juniper Berry Combination	lead and lead compounds
Chickweed	lead and lead compounds
Fenugreek & Thyme	lead and lead compounds
Ginger Root	lead and lead compounds
Eleutherococcus Root	lead and lead compounds
Goldenseal Herb	lead and lead compounds
Goldenseal Root	lead and lead compounds
Gotu Kola	lead and lead compounds
Scullcap	lead and lead compounds
Slippery Elm Bark	lead and lead compounds
White Willow Bark	lead and lead compounds
Yucca	lead and lead compounds
Echinacea Root & Leaf	lead and lead compounds
Red Raspberry Leaves	lead and lead compounds
Bitter Melon-Power	lead and lead compounds
Black Cohosh-Power	lead and lead compounds
Black Current-Power	lead and lead compounds
Chaste-Berry Power	lead and lead compounds
Elderberry-Power	lead and lead compounds
Echinacea-Goldenseal Power	lead and lead compounds
Horse-Chestnut-Power	lead and lead compounds
Echinacea-Power	lead and lead compounds
Valerian-Power	lead and lead compounds
Ginger-Power	lead and lead compounds
Ginger Tea-Power	lead and lead compounds
Veno-Care	lead and lead compounds
Digest-Ease	lead and lead compounds
DGL Power	lead and lead compounds

Ginkgo-Power	lead and lead compounds
Phyto Estrogen-Power	lead and lead compounds
St. John's-Power	lead and lead compounds
Aloe Vera Inner Leaf	lead and lead compounds
Bitter Melon	lead and lead compounds
Forskohlii	lead and lead compounds
Celery Seed	lead and lead compounds
Green Tea-Power (caffeine free)	lead and lead compounds
Echinacea-Goldenseal Combination	lead and lead compounds
Sea Kelp	lead and lead compounds

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products as recommended by the manufacturer. Accordingly, the consumer exposures have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or and dermal contact.

Duration of violations. Each of these ongoing violations has occurred on every day for at least March 3, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

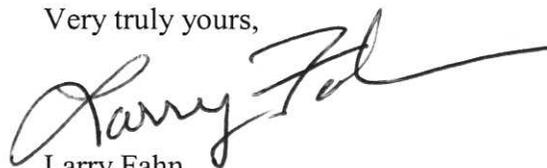
This notice of violation supplements the previous notice of violation issued by AYS against Ideasphere on August 7, 2007, regarding nine products.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Andrew L. Packard, Esq.
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, CA 94952
Tel: 707-763-7227
Fax: 707-763-9227

Very truly yours,



Larry Fahn
Executive Director

CERTIFICATE OF MERIT

**(for As You Sow's Proposition 65 Violation on IDEASPHERE, INC. doing
business as TWINLAB CORPORATION and NATURE'S HERBS, INC.)**

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

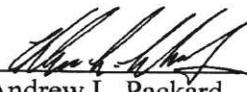
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 3, 2008


Andrew L. Packard

Attachments (for Attorney General copy only)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, CA 94104.

On March 3, 2008, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the parties listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

David Van Andel, CEO
IdeaSphere, Inc. doing business as
TwinLab Corporation
and Nature's Herbs, Inc.
3133 Orchard Vista Dr. SE
Grand Rapids, MI 49546

David Van Andel, CEO
IdeaSphere, Inc. doing business as
TwinLab Corporation
and Nature's Herbs, Inc.
600 E. Quality Drive
American Fork, UT 84003

David Van Andel, CEO
IdeaSphere, Inc. doing business as
TwinLab Corporation
and Nature's Herbs, Inc.
701 S 600 E
American Fork, UT 84003

On March 3, 2008, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Attn: Ed Weil, Deputy Attorney General
California Department of Justice
P.O. Box 70550
Oakland, CA 94612-0550

On March 3, 2008, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on March 3, 2008, at San Francisco, California.


Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

THE HONORABLE THOMAS J ORLOFF
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OAKLAND CA 94612

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IMPERIAL COUNTY DISTRICT ATTORNEY
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EL CENTRO CA 92243

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