

FILED
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2009 APR -1 PM 4:32

SACRAMENTO COURTS
DEPT. #53 #54

1 James M. Lindsay, State Bar No. 164758
Gene J. Stonebarger, State Bar No. 209461
2 Richard D. Lambert, State Bar No. 251148
LINDSAY & STONEBARGER
3 A Professional Corporation
620 Coolidge Drive, Suite 225
4 Folsom, CA 95630
Telephone: (916) 294-0002
5 Facsimile: (916) 294-0012

6 Attorneys for Plaintiff

7
8
9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO**
10

11 DAVID COLE,

12 Plaintiff,

13 vs.

14 SOLGAR INC.,

15 Defendant.
16
17
18

CASE NO. 34-2009-00039144-CU-ND-605

NOTICE OF MOTION AND MOTION
TO APPROVE PROPOSITION 65
SETTLEMENT AND FOR ENTRY OF
CONSENT JUDGMENT

Date: 5/28/2009

Time: 9:00 a.m.

Dept.: 54

Complaint Filed: 4/11/2009

19 TO EACH PARTY AND ITS ATTORNEY OF RECORD:

20 PLEASE TAKE NOTICE that on 5/28/2009, 2009 at 8:30 a.m., or as soon
21 thereafter as counsel can be heard in Department 54 of the above-entitled court, Plaintiff David
22 Cole will move this Court for an Order to Approve Proposition 65 Settlement and for Entry of
23 Consent Judgment.

24 The Motion will be based on this Notice of Motion, the Declaration of Gene J.
25 Stonebarger, and the Memorandum of Points and Authorities, served and filed herewith, on the
26 records and file herein, and such evidence as may be presented at the hearing of the Motion.

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1 Pursuant to Local Rule 3.04, the court will make a tentative ruling on the merits of this
2 matter by 2:00 p.m., the court day before the hearing. You may access and download the court's
3 ruling from the court's website at <http://www.saccourt.com>. If you do not have online access,
4 you may obtain the tentative ruling over the telephone by calling (916) 874-8142 and a deputy
5 clerk will read the ruling to you. If you wish to request oral argument, you must contact the
6 courtroom clerk at (916) 874-7858 (Department 53) or (916) 874-7848 (Department 54) and the
7 opposing party before 4:00 p.m. the court day before the hearing. If you do not call the court and
8 the opposing party by 4:00 p.m. on the court day before the hearing, no hearing will be held.

9
10 Dated: March 31, 2009

LINDSAY & STONEBARGER, APC

11
12
13 By: 

Gene J. Stonebarger
Attorneys for Plaintiff

LINDSAY & STONEBARGER
A Professional Corporation

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6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO**
9

10 DAVID COLE,

11 Plaintiff,

12 vs.

13 SOLGAR INC.,

14 Defendant.

CASE NO. 34-2009-00039614-CU-NP-603

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO APPROVE PROPOSITION
65 SETTLEMENT AND FOR ENTRY OF
CONSENT JUDGMENT

Date: 5/28/2009
Time: 9:00
Dept.: 54
Complaint Filed: 4/11/2009

17
18 **I.**

19 **INTRODUCTION**

20 Plaintiff David Cole ("Plaintiff") moves for approval of a settlement with Defendant
21 Solgar, Inc. ("Defendant") in this case, and for entry of the consent judgment memorializing the
22 settlement. A true and correct copy of the settlement agreement, entitled "CONSENT
23 JUDGMENT" (the "Judgment") is attached as Exhibit B to the Declaration of Gene J.
24 Stonebarger in Support of Motion to Approve Proposition 65 Settlement and for Entry of
25 Consent Judgment ("Stonebarger Decl.") filed and served herewith. This noticed motion is
26 brought pursuant to California Health & Safety Code § 25249.7(f)(4), which requires that these
27 procedures be followed.
28

LINDSAY & STONEBARGER
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1 Both parties have been represented by competent counsel. The Judgment is the result of
2 substantial arms-length negotiations between counsel, and constitutes a fair and reasonable
3 resolution of the claims raised. The Judgment has been submitted for review to the California
4 Attorney General, and is in full compliance with the statutory and regulatory requirements of
5 Proposition 65. Pursuant to Title 11, California Code of Regulations (“C.C.R.”) § 3003(a), the
6 Court is advised that the fact that the Attorney General does not object or otherwise respond to a
7 settlement shall not be construed as endorsement or of concurrence in such settlement. The
8 Judgment is in the interests of the general public and should be approved and entered.

9 **II.**

10 **STATUTORY AND PROCEDURAL BACKGROUND**

11 Defendant sells a variety of herbal dietary supplements in California. Plaintiff’s
12 complaint alleges, *inter alia*, that Defendant violated provisions of the Safe Drinking Water and
13 Toxic Enforcement Act of 1986, Health and Safety Code §§ 25249.5, *et seq.* (“Proposition 65”)
14 by knowingly and intentionally exposing persons to lead and lead compounds (the “Listed
15 Chemicals”) without first providing a clear and reasonable warning of such toxic exposures.

16 Lead affects almost every organ and system in the human body. The most sensitive is the
17 central nervous system, particularly in children. Lead also damages the kidneys and the immune
18 system. Lead is known to cross the placental barrier and cause damage to the developing fetus.
19 Harmful effects include premature births, low birth weights, decreased mental ability in the
20 infant, learning difficulties, tendencies toward violence and reduced growth in young children.
21 In adults, exposure to lead decreases cognitive ability and reaction time, causes weakness in
22 fingers, wrists, or ankles, and decreases memory abilities. Exposure to lead also causes
23 spontaneous abortions and anemia and permanently damages the male reproductive system even
24 at very low levels. Each of the Listed Chemicals are “known to the State of California” to cause
25 cancer and/or birth defects and other reproductive harm. (27 C.C.R. § 25000(a)-(c)).

26 Based on Plaintiff’s investigation, Plaintiff determined that Defendant’s product known
27 as “Solgar Turmeric Root Extract” vegetable capsules No. 04161 (“the Product”) was in fact
28 causing significant lead exposures, that these exposures could be proven, and that the exposures

1 were occurring far above level requiring a Proposition 65 warning. On June 10, 2008, Plaintiff
2 issued a Proposition 65 “60-Day Notice of Violation” detailing these violations to the Office of
3 the California Attorney General, the District Attorneys of each of California’s 58 counties, the
4 City Attorneys’ offices for San Francisco, San Jose, Los Angeles and San Diego, and to
5 Defendant. (Stonebarger Decl., ¶¶3-4.) A true and correct copy of the June 10, 2008 notice is
6 attached as Exhibit A to the Declaration of Gene J. Stonebarger. After sixty days had elapsed
7 (during which time the public prosecutors had failed to “commence diligent prosecution” within
8 the meaning of Proposition 65), Plaintiff filed the complaint in this matter on April 1, 2009.

9 Defendant denies any violation of Proposition 65. After Defendant provided Plaintiff
10 with sufficient materials and information to form a basis upon which Plaintiff could formulate a
11 demand, Plaintiff made its demand and additional settlement discussions ensued. (*Id.* ¶3) The
12 final agreement was memorialized in the Judgment on or about February 2, 2009. (*Id.* ¶¶6-7)

13 III.

14 ARGUMENT

15 A. **The Settlement Should Be Approved**

16 The Court has the statutory and regulatory power to approve and enter settlement
17 agreements as judgments. (Cal. Code Civ. Proc. (“C.C.P.”) § 664.6.) While, as a judgment, a
18 settlement may be rejected if it is contrary to public policy or incorporates an erroneous rule of
19 law, such circumstances are rare, and do not exist here. (*California State Auto. Assn. Inter-Ins.*
20 *Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664; *Mary R. v. B&R Corp.* (1983) 149
21 Cal.App.3d 308, 316-317 (settlement between physician and patient purporting to bar state from
22 access to information relevant to physician’s fitness to practice medicine contrary to public
23 policy); *Valdez v. Taylor Auto Company* (1954) 129 Cal.App.2d 810, 819 (trial stipulation
24 stating erroneous conclusion of law to follow from a given factual finding not binding on court in
25 entering judgment).) Further, “[it] is the policy of the law to discourage litigation and to favor
26 compromises made either in or out of court.” (*Gopal v. Yoshikawa* (1983) 147 Cal.App.3d 128,
27 131.)

28 ///

1 **B. The Settlement Agreement Meets The Requirements Of Health & Safety Code §**
2 **25249.7(f)(4)**

3 Health & Safety Code § 25249.7(f)(4) requires parties to submit settlements of direct
4 private enforcement actions to the court for approval by noticed motion. To approve the
5 settlement, the court must make three findings: (1) that the warning required by the settlement
6 complies with Proposition 65; (2) that any penalty amount is reasonable based on criteria
7 specified by statute, and (3) that the attorneys’ fee agreement is reasonable under California law.
8 The terms and conditions of the Judgment amply support these findings, and the Judgment
9 should be approved and entered accordingly.

10 **1. The Settlement Ensures Compliance With Proposition 65**

11 Proposition 65 provides that “no person in the course of doing business shall knowingly
12 and intentionally expose any individual to [a listed chemical] without first giving clear and
13 reasonable warning to such individual, except as provided in Section 25249.10.” (Health &
14 Safety Code § 25249.6.) Moreover, to be “clear and reasonable” within the meaning of the
15 implementing regulations, the warning must be displayed “with such conspicuousness, as
16 compared with other words, statements, designs, or devices in the label, labeling or display as to
17 render it likely to be read and understood by an ordinary individual under customary conditions
18 of purchase or use.” (27 C.C.R. § 25601(b)(3).) A consent judgment that incorporates, as here,
19 warning language specified by the statute’s implementing regulations (sometimes referred to as
20 the “safe harbor” warning language) plainly complies with Proposition 65 and therefore meets
21 the first requirement for settlement approval. (See Judgment, ¶2.2)

22 **2. The Civil Penalty Assessed Is Reasonable Under The Statutory Criteria**

23 Proposition 65 provides a non-exclusive list of factors that are to be considered in
24 assessing whether any amount of civil penalties is reasonable. (Health & Safety Code §
25 25249.7(b)(2), (f).) These factors are: (a) the number and extent of the violations; (b) the
26 severity of the violations; (c) the economic effect of the penalty on the violator; (d) whether the
27 violator took good faith measures to comply with this chapter and the time these measures were
28 taken; (e) the willfulness of the violator’s misconduct; and (f) the deterrent effect that the

1 imposition of the penalty would have on both the violator and the regulated community as a
2 whole. (*Id.*)

3 Under the terms of the Judgment, the parties agreed that a civil penalty in the amount of
4 \$500 would be assessed. (Judgment, ¶3.1(a.) The civil penalty assessment herein is supported
5 by the statutory criteria and the additional considerations set forth below. Specifically,
6 Defendant has provided Plaintiff with information establishing that the during the 2006-2008
7 time period, the sales volume of the Product in California was 1,680 units valued at less than
8 \$11,000. Defendant stopped selling the Product to California customers in 2008, and is willing
9 to comply with the Proposition 65 warning requirements on all future sales of the Product.

10 Defendant has also incurred its own attorneys' fees and has agreed to reimburse a
11 substantial portion of Plaintiff's investigative, expert and attorneys' fees and costs. While the
12 overall monetary relief agreed upon by the parties demonstrates to Defendant that it must be
13 aware of and must comply with Proposition 65, it is not so severe that it will unduly impede its
14 business. Furthermore, the fact that this settlement will be a matter of public record reasonably
15 suggests that other companies who sell dietary supplements containing Listed Chemicals in
16 California will be deterred from engaging in the same unlawful conduct.

17 **3. The Parties' Agreement Regarding Attorneys' Fees Is Reasonable**

18 Defendant has agreed to reimburse Plaintiff for his reasonable investigative, expert and
19 attorneys' fees and costs incurred in this case in the amount of \$10,000. (Judgment, ¶3.1(b.))
20 For the reasons set forth below, this agreement is reasonable.

21 The initial phase of this action involved product investigation, purchase and testing,
22 meetings with experts, company-specific and industry-wide research, and planning and strategy
23 meetings with the client and consultations. (Stonebarger Decl., ¶ 2) Plaintiff also engaged
24 certified laboratories to conduct analytical testing during this pre-notice phase. (*Id.*) Attorneys
25 closely supervised each stage of this investigation and reviewed in detail the work of Plaintiff's
26 experts and consultants.

27 Plaintiff issued a 60-Day Notice detailing Defendant's violations on June 10, 2008.
28 (Judgment, Exhibit B.) Shortly thereafter, the Parties entered into extensive discussions

1 regarding the claims and defenses at issue in this case. A settlement agreement was then
2 finalized and formalized through the Judgment. The amount of \$10,000 being reimbursed by
3 Defendant for attorneys' fees and costs is significantly less than the actual amount of attorneys'
4 fees and costs incurred by Plaintiff in this action. (Stonebarger Decl., ¶9)

5 **C. The Settlement Is Fair And Promotes The Public Interest**

6 The settlement in this action was reached after arms-length negotiations by experienced
7 counsel who possessed sufficient information to evaluate the case and the terms of the Judgment.
8 (*See, Wershba v. Apple Computer* (2001) 89 Cal.App.4th 324, 245 (proposed settlement
9 presumed fair where counsel are experienced in type of litigation); *Dunk v. William Geer* (1996)
10 48 Cal.App.4th 1794, 1801.) The California Attorney General has been given the required
11 opportunity to review and comment on the settlement. Moreover, the Judgment promotes the
12 public interest by requiring Defendant to test its products for Listed Chemicals and provide
13 warnings to consumers. These requirements will be enforceable through the Court's continuing
14 jurisdiction and contempt powers. The settlement will also provide an incentive for others in the
15 industry to voluntarily comply with the requirements of Proposition 65 and to work toward
16 reformulating these products to eliminate toxic exposures.

17 **IV.**

18 **CONCLUSION**

19 The Judgment is the product of extensive negotiations, is manifestly reasonable, fair and
20 in the public interest, and meets all of the criteria established under the statute and applicable
21 regulations. For all of the reasons set forth above, the settlement should be approved for entry as
22 a Consent Judgment.

23
24 Dated: March 31, 2009

LINDSAY & STONEBARGER, APC

25
26 By: 

Gene J. Stonebarger
Attorneys for Plaintiff

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10 Attorneys for Plaintiff

11
12
13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO**

14 DAVID COLE,
15)
16) Plaintiff,
17)
18) vs.
19)
20) SOLGAR INC.,
21)
22) Defendant.
23)
24)
25)
26)
27)
28)

CASE NO. 34-2009-00639614-CU-NP-605
DECLARATION OF GENE J. STONEBARGER IN SUPPORT OF MOTION TO APPROVE PROPOSITION 65 SETTLEMENT AND FOR ENTRY OF CONSENT JUDGMENT
Date: 5/28/2009
Time: 9:00 a.m.
Dept.: 54
Complaint Filed: 4/1/2009

18 I, GENE J. STONEBARGER, declare:

19 I make this declaration from personal knowledge. If called, I could and would testify
20 competently as follows:

21 1. I am lead counsel for Plaintiff David Cole ("Plaintiff") in this Health & Safety
22 Code § 25249.6 *et seq.* ("Proposition 65") citizen enforcement action. This firm has served as
23 Plaintiff's counsel in the prosecution of this matter. I submit this declaration pursuant to Cal.
24 Health & Safety Code § 25249.7(f)(4) and its implementing regulations in support of Plaintiff's
25 Motion to Approve Proposition 65 Settlement and for Entry of Consent Judgment, filed
26 herewith.

27 2. The initial phase of this action involved product investigation, purchase and
28 testing, meetings with experts, company-specific and industry-wide research, and planning and

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A Professional Corporation

1 strategy meetings with the client and consultations. Plaintiff also engaged certified laboratories
2 to conduct analytical testing during this pre-notice phase. Attorneys closely supervised each
3 stage of this investigation and reviewed in detail the work of Plaintiff's experts and consultants.

4 3. On June 10, 2008, Plaintiff issued a Proposition 65 "60-Day Notice of Violation"
5 detailing violations of Proposition 65 committed by Solgar, Inc. concerning the product
6 manufactured by Solgar, Inc. known as "Solgar Tumeric Root Extract" vegetable compound no.
7 04161 ("the Product"). Defendant retained counsel and promptly initiated settlement discussions
8 during the notice period in July, 2008. These settlement discussions continued for several
9 months and involved the exchange of testing data and draft iterations of the Consent Judgment.
10 In these discussions, Plaintiff, through counsel, explained the strengths of his case and the public
11 interest in settling the claims early, and requested the received from Defendant sufficient
12 information to form a basis upon which to formulate its demand.

13 4. The 60-Day Notice of Violation relating to this case was served on the Office of
14 the California Attorney General, the District Attorneys of each of California's 58 counties, the
15 City Attorneys' offices for San Francisco, San Jose, Los Angeles and San Diego, and to
16 Defendant. A true and correct copy of said 60-Day Notice of Violation is attached hereto as
17 Exhibit A.

18 5. Plaintiff filed the complaint herein on April 1, 2009, charging Defendant with
19 violating Proposition 65 in connection with its California sales of dietary supplements.

20 6. In January, 2009, Plaintiff and Defendant successfully concluded settlement
21 negotiations and memorialized the agreement in the Consent Judgment attached hereto as Exhibit
22 B. As required by Cal. Health & Safety Code § 25249.7(f)(4), the Judgment is before this court
23 on Motion for Approval and Entry.

24 7. The Consent Judgment provides for injunctive relief against Solgar, Inc. wherein
25 Solgar is required to, among other things, provide a warning on the product under specified
26 circumstances stating as follows: **"WARNING: This product contains a chemical known to**
27 **the State of California to cause birth defects or other reproductive harm."**

28 ///

1 8. The Consent Judgment further requires that Defendant pay a \$500 civil penalty
2 pursuant to Health and Safety Code § 25249.7(b) and to reimburse Plaintiff for costs and
3 attorneys' fees, in investigating, bringing and resolving this action, in the amount of \$10,000.00.

4 9. My billing rate on this matter was \$425 per hour. I have spent over 45 hours in
5 investigating, bringing and resolving this action through the date of drafting this declaration. As
6 such, the amount being reimbursed by Defendant for attorneys' fees and costs is significantly
7 less than the actual amount of attorneys' fees and costs incurred in this action.

8 10. I have extensive experience litigating complex litigation matters and class actions.
9 I substantially concentrate my practice in the prosecution of complex business litigation matters
10 and class actions. I have successfully served as Class Counsel prosecuting numerous Class
11 Actions to Judgment, including Mendez v. Carter's Inc. (Sacramento County Superior Court);
12 Ben Bridge Jeweler Cases (Sacramento County Superior Court); Cost Plus Credit Card Cases
13 (Sacramento County Superior Court); Children's Place Cases (Stanislaus County Superior
14 Court); Castaneda v. Dillard's, Inc. (San Joaquin County Superior Court); Dress Barn Credit
15 Card Cases (Stanislaus County Superior Court); Sheffrey v. Pat & Oscar's Franchise, Inc. (San
16 Diego County Superior Court); Barajas v. Dixieline Lumber Company (San Diego County
17 Superior Court); O'Keefe v. West Marine, Inc. (San Diego County Superior Court); Wood v.
18 Coach, Inc. (Contra Costa County Superior Court); Bell v. Genesco (San Diego County Superior
19 Court); and Lewis, et al. v. Mother's Work (San Diego Superior Court).


20 11. Based on my experience and my analysis of the relative strengths and
21 weaknesses of the case, the substantial public benefits gained through the Judgment, and the
22 risks and costs of further litigation, I believe the Consent Judgment is fair and is in the best
23 interest of the general public.

24 12. Plaintiff has filed and served on the California Attorney General's Office true and
25 correct copies of all of the moving papers associated with this motion, and electronically filed a
26 Report of Settlement with the Attorney General's Office.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and that this declaration was executed on April 1, 2009 at Folsom,
3 California.

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5 Gene J. Stonebarger
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Exhibit A

June 10, 2008

SIXTY-DAY NOTICE OF VIOLATION

Scott Rudolph
Chairman and CEO
NBTY, Inc.
90 Orville Drive 11716
Bohemia, New York

Harvey Kamil
President and CFO
NBTY, Inc.
90 Orville Drive 11716
Bohemia, New York

Rand Skolnick
President
Solgar Vitamin and Herb
500 Willow Tree Road
Leonia, NJ 07605

Corporation Service Company which will do
Business in California as CSC – Lawyers
Incorporating Service
Agent for Service of Process for Solgar, Inc.
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Dear Messrs. Rudolph, Kamil, and Skolnick and Agent for Service of Process for Solgar, Inc.:

California's Proposition 65 (California Health and Safety Code Sections 25249.6 et seq.) is designed to promote awareness of potential exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products or produced by industrial activities. Attached to this letter is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary", which has been prepared by the State of California, Office of Environmental Health Hazard Assessment ("OEHHA"). OEHHA may be contacted at 916-445-6900. OEHHA's website pertaining to Proposition 65 may be found at: <http://www.oehha.ca.gov/prop65.html>.

David Cole ("Plaintiff") hereby gives you notice that Solgar, Inc., Solgar Vitamin and Herb Company, and NBTY, Inc. have been, are currently, and threaten to be in violation of California Health & Safety Code section 25249.6; this sixty-day notice is sent to you in compliance with section 25249.7(d) of the California Health & Safety Code. Both Lindsay & Stonebarger and Plaintiff are private enforcers of Proposition 65, as provided by California Health & Safety Code § 25249.7(d). You may contact both Lindsay & Stonebarger and Plaintiff at the above listed address and telephone number; I am counsel for Plaintiff in this matter.

Scott Rudolph
Harvey Kamil
Rand Skolnick
Agent for Service of Process for Solgar, Inc.
June 10, 2008
Page 2

The above-referenced violations occur when California consumers purchase and ingest your Solgar "Turmeric Root Extract (*Curcuma longa*)". The products contain lead, a chemical known to the State of California to cause reproductive toxicity. California residents are exposed to lead when they ingest the products. This lead is then absorbed into the body through the gastrointestinal tract wherein it causes the harm noted.

Your business did not and does not provide consumers with clear and reasonable warnings before it exposes them to lead, as required by Health & Safety Code § 25249.6. These violations have occurred every day for at least the last year and will continue every day until the lead is removed from the products or until clear and reasonable warnings are given. The Proposition 65 violations noted herein occur in each of California's 58 counties or in such Counties as your products are sold or consumed.

Very truly yours,

LINDSAY & STONEBARGER



Gene J. Stonebarger

Enclosures

cc: See Attached Service List

CERTIFICATE OF MERIT
Health & Safety Code Section 25249.7(d)

1. Gene J. Stonebarger, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.


2. I am the 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 alleged exposure to the listed chemical that is 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 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 & Safety Code Section 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: June 10, 2008



Gene J. Stonebarger

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. The requirement to warn applies twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it could enter a source of drinking water. The prohibition applies twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a

70-year lifetime. The Proposition 65 regulations identify chemical specific no significant risk levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical did not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount of the listed chemical, except when the discharger can show that exposure in drinking water to the amount detected poses no significant risk of cancer, or is below the NOEL for reproductive toxicity divided by 1,000.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

1 PROOF OF SERVICE

2 I am a citizen of the United States and am employed in Sacramento County. I am over
3 the age of eighteen (18) years and not a party to this action: my business address is 620 Coolidge
4 Drive, Suite 225, Folsom, California 95630.

5 On June 11, 2008, I caused to be served the following document(s):

6 **SIXTY-DAY NOTICE OF VIOLATION**

7 to each of the parties herein as follows:

8 SEE ATTACHED SERVICE LIST

9
10 **BY MAIL:** I caused such envelope(s) to be deposited in the mail at my business address,
11 addressed to the addressee(s) designated. I am readily familiar with Lindsay &
12 Stonebarger's practice for collection and processing of correspondence and pleadings for
13 mailing. It is deposited with the United States Postal Service on that same day in the
14 ordinary course of business.

15 **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the
16 addressee(s) designated.


17 **BY OVERNIGHT COURIER SERVICE:** I caused such envelope(s) to be delivered
18 via overnight courier service to the addressee(s) designated.

19 **BY FACSIMILE:** I caused said document to be transmitted to the telephone number(s)
20 of the addressee(s) designated.

21 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document(s) to be
22 sent to the persons at the e-mail addresses listed above. I did not receive, within a
23 reasonable time after the transmission, any electronic message or other indication that the
24 transmission was unsuccessful.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Executed at Folsom, California on June 11, 2008.

28 
Delene Havens

A Professional Corporation

Alameda County District Attorney
1225 Fallon Street # 900
Oakland CA 94612

Alameda County District Attorney
5672 Stoneridge Drive
Pleasanton CA 94588

Alameda County District Attorney
39439 Paseo Padre Pkwy #120
Fremont CA 94538

Alameda District Attorney
24405 Amador Street #103
Hayward CA 94544

Berkeley District Attorney
2120 Martin Luther King Jr. Way
Berkeley CA 94704

Alpine County District Attorney
14777 State Route 89
Markleeville CA 96120

Amador County District Attorney
708 Court Street
Jackson CA 95642

Butte County District Attorney
1474 Myers Street
Oroville CA 95965

Butte County District Attorney
655 Oleander Avenue
Chico CA 95926

Butte County District Attorney
25 County Center Drive
Oroville CA 95965

Calaveras County District Attorney
891 Mountain Ranch Road
San Andreas CA 95249

District Attorney-Victim Witness
168 North Edwards Street
Independence CA 93526

Colusa County District Attorney
547 Market Street
Colusa CA 95932

Contra Costa County District Attorney
100 37th Street
Richmond CA 94805

Contra Costa County District Attorney
651 Pine Street 12th Floor
Martinez CA 94553

Contra Costa District Attorney
725 Court Street
Martinez CA 94553

Del Norte County District Attorney
450 H Street
Crescent City CA 95531

District Attorney-Prosecution
1400 West Lacey Boulevard
Hanford CA 93230

District Attorney
14227 Road 28
Madera CA 93638

District Attorney-Family Support
780 Loughborough Drive
Merced CA 95348

El Dorado County District Attorney
807 Emerald Bay Road
South Lake Tahoe CA 96150

El Dorado County District Attorney
471 Pierroz Road
Placerville CA 95667

El Dorado County District Attorney
515 Main Street
Placerville CA 95667

El Dorado County District Attorney
3057 Briw Road
Placerville CA 95667

El Dorado District Attorney
1360 Johnson Boulevard
South Lake Tahoe CA 96150

Fresno County District Attorney
2220 Tulare Street
Fresno CA 93721

Fresno County District Attorney
748 South 10th Street
Fresno CA 93702

Kern County District Attorney
400 North China Lake Boulevard
Ridgecrest CA 93555

Fresno County Juvenile District Attorney
748 South 10th Street
Fresno CA 93702

Kern County District Attorney
2100 College Avenue
Bakersfield CA 93305

Glenn County District Attorney
540 West Sycamore Street
Willows CA 95988

Kern County District Attorney
311 North Lincoln Street
Taft CA 93268

Hemet County District Attorney
910 North State Street
Hemet CA 92543

Kern County District Attorney
325 Central Valley Highway
Shafter CA 93263

Humboldt County District Attorney
333 K Street
Eureka CA 95501

Kern County District Attorney
1122 Jefferson Street
Delano CA 93215

Humboldt County District Attorney
317 2nd Street
Eureka CA 95501

Kern County District Attorney
1775 Highway 58
Mojave CA 93501

Humboldt District Attorney Victim Witness
714 4th Street
Eureka CA 95501

Kings County District Attorney
1400 West Lacey Boulevard
Hanford CA 93230

Imperial County District Attorney
939 West Main Street
El Centro CA 92243

Lake County District Attorney
255 North Forbes Street
Lakeport CA 95453

Imperial County District Attorney
852 Broadway Street
El Centro CA 92243

Lake County District Attorney
6850 Old Highway 53
Clearlake CA 95422

Inyo County District Attorney
386 West Line Street
Bishop CA 93514

L A County District Attorney
2958 East Florence Avenue
Huntington Park CA 90255

District Attorney-Victim Witness
301 West Line Street
Bishop CA 93514

L A County District Attorney
210 West Temple Street
Los Angeles CA 90012

Kern County District Attorney
12022 Main Street
Lamont CA 93241

L A County District Attorney
1945 South Hill Street
Los Angeles CA 90007

Kern County District Attorney
128 East Coso Avenue
Ridgecrest CA 93555

L A County District Attorney
849 South Broadway 11th Floor
Los Angeles CA 90014

L A County District Attorney
7625 South Central Avenue
Los Angeles CA 90001

L A County District Attorney
1601 Eastlake Avenue
Los Angeles CA 90033

L A County District Attorney
214 South Fetterly Avenue
Los Angeles CA 90022

L A County District Attorney
210 West Temple Street #18709
Los Angeles CA 90012

L A County District Attorney
4130 Overland Avenue
Culver City CA 90230

Santa Monica District Attorney
1725 Main Street #228
Santa Monica CA 90401

LA County District Attorney
23747 Valencia Boulevard #1
Valencia CA 91355

LA County District Attorney
1110 West Avenue J
Lancaster CA 93534

West LA District Attorney
1633 Purdue Avenue
Los Angeles CA 90025

Pasadena District Attorney
215 North Marengo Avenue #130
Pasadena CA 91101

Pasadena District Attorney
300 East Walnut Street #103
Pasadena CA 91101

Los Angeles County District Attorney
7500 Imperial Highway # 324
Downey CA 90242

Los Angeles County District Attorney
12720 Norwalk Boulevard #201
Norwalk CA 90650

Los Angeles County District Attorney
7285 Quill Drive
Downey CA 90242

Los Angeles County District Attorney
825 le Avenue #190
Torrance CA 90503

Los Angeles County District Attorney
6230 Sylmar Avenue #201
Van Nuys CA 91401

Los Angeles County District Attorney
23525 Civic Center Way
Malibu CA 90265

Los Angeles County District Attorney
10025 Flower Street #374
Bellflower CA 90706

Los Angeles County District Attorney
150 West Commonwealth Avenue
Alhambra CA 91801

Los Angeles County District Attorney
600 East Broadway
Glendale CA 91206

Los Angeles County District Attorney
11234 Valley Boulevard #110
El Monte CA 91731

Los Angeles County District Attorney
9298 West 3rd Street
Beverly Hills CA 90210

Los Angeles County District Attorney
900 3rd Street Third Floor
San Fernando CA 91340

Los Angeles District Attorney
200 West Compton Boulevard #700
Compton CA 90220

Los Angeles District Attorney
7339 Painter Avenue
Whittier CA 90602

Los Angeles District Attorney
621 Hawaii Street
El Segundo CA 90245

Los Angeles District Attorney
1 East Regent Street #05
Inglewood CA 90301

Los Angeles District Attorney
400 Civic Center Plaza #201
Pomona CA 91766

Los Angeles District Attorney
415 West Ocean Boulevard #305
Long Beach CA 90802

Los Angeles District Attorney
300 West Maple Avenue
Monrovia CA 91016

Madera District Attorney
209 West Yosemite Avenue
Madera CA 93637

Marin County District Attorney
3501 Civic Center Drive #130
San Rafael CA 94903

Mariposa County District Attorney
5088 Bullion Street
Mariposa CA 95338

Mendocino County District Attorney
189 South School Street
Ukiah CA 95482

Mendocino County District Attorney
107 South State Street
Ukiah CA 95482

Mendocino District Attorney
125 East Commercial Street
Willits CA 95490

Mendocino District Attorney
100 North State Street
Ukiah CA 95482

Mendocino District Attorney
700 South Franklin Street
Fort Bragg CA 95437

Merced County District Attorney
627 West 21st Street
Merced CA 95340

Merced County District Attorney
658 West 20th Street
Merced CA 95340

Merced County District Attorney
445 I Street
Los Banos CA 93635

Merced District Attorney
2150 M Street
Merced CA 95340

Modoc County District Attorney
204 South Court Street
Alturas CA 96101

Mono County District Attorney
Main Street
Bridgeport CA 93517

District Attorney
Old Mammoth Road
Mammoth Lakes CA 93546

District Attorney
250 Franciscan Way
King City CA 93930

Monterey County District Attorney
240 Church Street #101
Salinas CA 93901

Monterey County District Attorney
1200 Aguajito Road #301
Monterey CA 93940

Napa County District Attorney
931 Parkway Mall
Napa CA 94559

Nevada County District Attorney
950 Maidu Avenue
Nevada City CA 95959

Nevada County District Attorney
201 Church Street #8
Nevada City CA 95959

Nevada County District Attorney
10075 Levone Avenue #101
Truckee CA 96161

Orange County District Attorney
4601 Jamboree Road # 102
Newport Beach CA 92660

Orange County District Attorney
1275 North Berkeley Avenue
Fullerton CA 92832

Orange County District Attorney
700 Civic Center Drive West
Santa Ana CA 92701

Orange County District Attorney
30143 Crown Valley Pkwy
Laguna Niguel CA 92677

West Orange County District Attorney
8141 13th Street
Westminster CA 92683

District Attorney
405 West 5th Street #606
Santa Ana CA 92701

District Attorney
801 Civic Center Drive West
Santa Ana CA 92701

Placer County District Attorney
2501 North Lake Boulevard
Tahoe City CA 96145

Placer County District Attorney
11562 B Avenue
Auburn CA 95603

Placer County District Attorney
11795 Education Street #101
Auburn CA 95602

County District Attorney
100 Stonehouse Court
Roseville CA 95678

Plumas County District Attorney
520 Main Street #404
Quincy CA 95971

Riverside County District Attorney
4075 Main Street
Riverside CA 92501

Riverside County District Attorney
135 North Alessandro Street #210
Banning CA 92220

Riverside County District Attorney
220 North Broadway #110
Blythe CA 92225

Riverside County District Attorney
2081 Iowa Avenue
Riverside CA 92507

Riverside County District Attorney
1370 South State Street
San Jacinto CA 92583

Riverside District Attorney
82675 Highway 111 Third Floor
Indio CA 92201

District Attorney Juvenile Division
9991 County Farm Road
Riverside CA 92503

Sacramento County District Attorney
901 G Street
Sacramento CA 95814

San Bernardino City District Attorney
13260 Central Avenue
Chino CA 91710

San Bernardino District Attorney
14455 Civic Drive
Victorville CA 92392

San Bernardino District Attorney
235 East Mountain View Street
Barstow CA 92311

San Bernardino District Attorney
6527 White Feather Road
Joshua Tree CA 92252

San Bernardino District Attorney
8303 Haven Avenue
Rancho Cucamonga CA 91730

San Bernardino District Attorney
477 Summit Boulevard
Big Bear Lake CA 92315

San Bernardino District Attorney
216 Brookside Avenue
Redlands CA 92373

San Joaquin District Attorney
222 East Weber Avenue #202
Stockton CA 95202

San Bernardino County District Attorney
10565 Civic Center Drive #250
Rancho Cucamonga CA 91730

San Joaquin District Attorney
333 East Center Street
Manteca CA 95336

San Bernardino County District Attorney
412 East Hospitality Lane
San Bernardino CA 92408

San Luis Obispo District Attorney
1035 Palm Street #450
San Luis Obispo CA 93408

San Bernardino County District Attorney
1111 Bailey Avenue
Needles CA 92363

San Luis Obispo District Attorney
1050 Monterey Street #235
San Luis Obispo CA 93408

San Diego County District Attorney
500 3rd Avenue Third Floor
Chula Vista CA 91910

San Luis Obispo District Attorney
1201 Palm Street
San Luis Obispo CA 93401

San Diego County District Attorney
330 West Broadway #1300
San Diego CA 92101

San Mateo County District Attorney (Juvenile Div.)
21 Tower Road
San Mateo CA 94402

San Diego District Attorney
250 East Main Street
El Cajon CA 92020

San Mateo County District Attorney
Family Support Division
Redwood City CA 94061

San Diego District Attorney
2851 Meadow Lark Drive
San Diego CA 92123

San Mateo District Attorney
1050 Mission Road
South San Francisco CA 94080

San Diego District Attorney
330 West Broadway
San Diego CA 92101

Santa Barbara County District Attorney
115 Civic Center Plaza
Lompoc CA 93436

San Diego District Attorney
325 South Melrose Drive #130
Vista CA 92083

Santa Barbara County District Attorney
401 East Ocean Avenue
Lompoc CA 93436

San Joaquin County District Attorney
475 East 10th Street # C
Tracy CA 95376

Santa Barbara District Attorney
201 South Miller Street #202
Santa Maria CA 93454

San Joaquin County District Attorney
222 East Weber Avenue
Stockton CA 95202

Santa Barbara District Attorney
312 East Cook Street #D
Santa Maria CA 93454

San Joaquin District Attorney
315 West Pine Street #8
Lodi CA 95240

Santa Barbara District Attorney
1105 Santa Barbara Street
Santa Barbara CA 93101

Santa Clara County District Attorney
70 West Hedding Street
San Jose CA 95110

District Attorney
111 North Pythian Road
Santa Rosa CA 95409

Santa Clara County District Attorney
12433 Monterey Highway
San Martin CA 95046

Stanislaus County District Attorney
817 10th Street 2nd Floor
Modesto CA 95354

Santa Clara District Attorney
270 Grant Avenue #400
Palo Alto CA 94306

Stanislaus District Attorney
1100 I Street
Modesto CA 95354

Santa Cruz County District Attorney
420 May Avenue
Santa Cruz CA 95060

Stanislaus District Attorney
300 Starr Avenue
Turlock CA 95380

District Attorney
1430 Freedom Boulevard #7
Watsonville CA 95076

Sutter County District Attorney
446 2nd Street
Yuba City CA 95991

Shasta County District Attorney
1525 Court Street
Redding CA 96001

Tehama County District Attorney
444 Oak Street
Red Bluff CA 96080

Sierra County District Attorney
100 Courthouse Square
Downieville CA 95936

Trinity County District Attorney
101 Court Street 2nd Floor
Weaverville CA 96093

Siskiyou County District Attorney
311 4th Street
Yreka CA 96097

Tulare County District Attorney
87 East Morton Avenue
Porterville CA 93257

Solano County District Attorney
800 Chadbourne Road
Suisun City CA 94585

Tulare County District Attorney
425 East Kern Avenue
Tulare CA 93274

Solano County District Attorney
321 Tuolumne Street
Vallejo CA 94590

Tulare County District Attorney
2350 West Burrel Avenue
Visalia CA 93291

Sonoma County District Attorney
600 Administration Drive #212J
Santa Rosa CA 95403

District Attorney-Witness
87 East Morton Avenue
Porterville CA 93257

Sonoma County District Attorney
2300 County Center Drive # B150
Santa Rosa CA 95403

Tuolumne County District Attorney
41 Yaney Avenue
Sonoma CA 95370

Sonoma County District Attorney
111 North Pythian Road
Santa Rosa CA 95409

Ventura County District Attorney
800 South Victoria Avenue
Ventura CA 93009

Yolo County District Attorney
204 4th Street
Woodland CA 95695

District Attorney
725 Main Street #303
Woodland CA 95695

District Attorney
770 Dead Cat Alley #303
Woodland CA 95695

District Attorney Family Division
100 West Court Street
Woodland CA 95695

Yuba County District Attorney
215 5th Street
Marysville CA 95901

Los Angeles City Attorney
800 City Hall East
200 North Main Street
Los Angeles CA 90012

City of San Diego
Office of the City Attorney
Civic Center Plaza
1200 Third Avenue #1620
San Diego CA 92101

City of San Jose
Office of the City Attorney
200 East Santa Clara Street
San Jose CA 95113

City of San Francisco
Office of the City Attorney
City Hall room 234
San Francisco CA 94102

Proposition 65 Enforcement Reporting
Attention: Prop 65 Coordinator
1515 Clay Street Suite 2000
P.O. Box 70550
Oakland California 94612-0550

Scott Rudolph Chairman and CEO
NBTY Inc.
90 Orville Drive 11716
Bohemia New York

Harvey Kamil President and CFO
NBTY Inc.
90 Orville Drive 11716
Bohemia New York

Rand Skolnick President
Solgar Vitamin and Herb
500 Willow Tree Road
Leonia NJ 07605

Corporation Service Company
which will do Business in California as
CSC Lawyers Incorporating Service
Agent for Service of Process for Solgar Inc.
2730 Gateway Oaks Drive Suite 100
Sacramento CA 95833

Exhibit B

1 GENE J. STONEBARGER SBN 209461
LINDSAY & STONEBARGER PC
2 620 Coolidge Drive, Suite 225
Folsom, CA 95630-3181
3 Telephone: (916) 294-0002
Facsimile: (916) 294-0012
4 Attorneys for the Plaintiff David Cole

5
6
7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 **DAVID COLE,**

11
12 Plaintiff,

13 v.

14 **SOLGAR, INC.,**

15 Defendant.

CASE NO: _____

CONSENT JUDGMENT

Dept:

Judge: Hon.

Complaint Filed:

Trial Date: None set.

16
17
18 **I. INTRODUCTION**

19 **1. INTRODUCTION**

20 1.1. On June 10, 2008, David Cole, a California resident, on behalf of himself and the
21 People of the State of California ("Plaintiff"), issued a Proposition 65 60-day Notice Letter to
22 Solgar, Inc. ("Defendant"). The Notice Letter also listed NBTY, Inc. and Solgar Vitamin and Herb
23 Company, but those entities are not defendants because neither manufactures, distributes or sells the
24 product at issue. Plaintiff has or will file a complaint for civil penalties and injunctive relief alleging
25 violations of Proposition 65. Plaintiff's Complaint alleges that use of Defendant's Product (as
26 defined in Section 2.1) results in exposure to a chemical known to the State of California to cause
27

1 birth defects or other reproductive harm. The Complaint further alleges or will allege that under the
2 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code §§ 25249.6 *et*
3 *seq.*, also known as “Proposition 65,” Defendant must provide persons with a “clear and reasonable
4 warning” within the meaning of Proposition 65 before exposing individuals to these chemicals, and
5 that the Defendant failed to do so. Prior to the filing of the Complaint, Plaintiff and Defendant
6 resolved this matter in accordance with the terms herein.

7 1.2. Defendant is a corporation or other business entity that employs ten or more persons, or
8 employed ten or more persons at some time relevant to the allegations of the Complaint, and which
9 either manufactures, and/or distributes and/or sells Product in the State of California or to consumers
10 in the State of California, or has done so in the past.

11 1.3. For purposes of this Consent Judgment only, the parties stipulate that this Court has
12 jurisdiction over the allegations of violations contained in the Plaintiff’s Complaint and personal
13 jurisdiction over Defendant as to the acts alleged in the Plaintiff’s Complaint, that venue is proper in
14 the County of Sacramento, and that this Court has jurisdiction to enter this Consent Judgment as a
15 full and final resolution of all claims which were or could have been raised in the Complaint based
16 on the facts alleged therein, as set forth in Part 7.

17 1.4. Shortly after receipt of Plaintiff’s 60 Day Notice Letter, Defendant investigated the
18 allegations therein. Defendant contacted Plaintiff to resolve the matter. The parties negotiated a
19 resolution, as embodied in this Consent Judgment.

20 1.5. The Plaintiff and Defendant enter into this Consent Judgment as a full and final
21 settlement of all claims that were raised in the Complaint, or which could have been raised in the
22 Complaint, arising out of the facts or conduct alleged therein. By execution of this Consent
23 Judgment and agreeing to provide the relief and remedies specified herein, Defendant does not admit
24 any fact, any conclusion of law, nor any violation of Proposition 65, or any other statutory, common
25 law or equitable requirements. Neither this Consent Judgment, nor compliance with this Consent
26 Judgment, shall be construed as an admission by Defendant of any fact, conclusion of law, issue of
27 law or violation of law. Defendant specifically does not admit that lead is present in any Product

1 except, if at all, at “naturally occurring” levels within the meaning of 27 Cal. Code Reg. § 25501.
2 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, or defense
3 Plaintiff or Defendant may have in any other or in future legal proceedings unrelated to this Consent
4 Judgment. However, this Section 1.5 shall not diminish or otherwise affect the obligations,
5 responsibilities, and duties of the parties under this Consent Judgment.

6 **2. INJUNCTIVE RELIEF; CLEAR AND REASONABLE WARNINGS**

7 2.1. “Product” means the nutritional or dietary supplement “Solgar Turmeric Root Extract”
8 vegetable capsules No. 04161 that is manufactured, or distributed or sold by or on behalf of
9 Defendant and intended for sale to, or use by, consumers within the State of California.

10 2.2. In 2008 Defendant terminated shipments of Product to California customers. For any
11 Product shipped by Defendant after entry of this Consent Judgment, if required under Section 2.3,
12 Defendant shall provide a warning for its respective Product on the labels of such Product.
13 Warnings shall be provided by May 1, 2009, or when new labels for each Product are prepared and
14 printed in the ordinary course of business, whichever is earlier. If required under Section 2.3,
15 Defendant shall be obligated to apply warnings only on those Products intended for sale to, or use
16 by, consumers within the State of California and that are manufactured, distributed or sold by
17 Defendant. The warning language shall be in at least the same type size as the “FDA disclaimer”
18 (i.e., “This claim has not been evaluated by the FDA”), or the directions for product use and other
19 warning information. The warning shall be affixed to the bottle or container from which the
20 California consumer obtains the product. The warning shall consist the following text:
21 **“WARNING: This product contains a chemical known to the State of California to cause birth**
22 **defects or other reproductive harm.”**

23 2.3. Defendant is required to provide a warning only if the “daily dose” of lead in a Product
24 exceeds 0.50 ug/day (“micrograms/day”), the safe harbor level set forth in 27 Cal. Code Reg. §§
25 25805. The “daily dose” is conclusively established for purposes of this Consent Judgment to be the
26 maximum daily dose recommended on a Product label.

27 (a) A program of laboratory testing shall be undertaken by Defendant or on
28

1 their behalf to confirm lead levels in the Products subject to this Consent
2 Judgment to document whether there is a warning obligation hereunder.
3 The verification program shall include Defendant obtaining a test result
4 documenting lead levels in the turmeric root powder ingredient used in the
5 Products at least four (4) times a year, unless Defendant orders and
6 receives the turmeric root powder ingredient less than four (4) times a
7 year, in which case Defendant shall obtain a test result for each lot
8 delivered that year. Defendant may order such tests, conduct them in-
9 house or obtain test results from suppliers of the turmeric root powder, or
10 any combination of the three. Defendant may conduct additional
11 verification activities.

12 (b) For the first two years after the date of entry of this Consent Judgment,
13 once per year Plaintiff in writing may request review of Defendant's
14 laboratory data documenting lead levels in a daily dose of the Product.
15 Plaintiff agrees to hold such data as confidential and not to disclose it to
16 third parties except, upon request, to the Office of the Attorney General.
17 If Plaintiff determines the laboratory data document a violation of this
18 Consent Judgment, the parties shall meet and confer in good faith within
19 sixty (60) days of such initial determination. If Plaintiff still determines
20 after consultation there is a violation of this Consent Judgment, Plaintiff
21 may seek legal or equitable relief.

22 (c) Nothing in this Consent Judgment shall impair the right of Defendant to
23 establish that any amount of lead in excess of 0.50 ug/day in a daily dose
24 is "naturally occurring" within the meaning of 27 Cal. Code Reg. § 25501.
25 Defendant shall make any such showing by a preponderance of the
26 evidence.

27 (d) In the event of a dispute under this Section 2.3 which the parties cannot
28

1 resolve after meeting and conferring in good faith, any party may move to
2 modify the Consent Judgment as provided for in Section 4.1 in order to
3 permit modification of the standard for a warning set forth in Section 2.2
4 above or to seek other modification as allowed by law or equity.

5 2.4. If Defendant sells a Product through the Internet, via telephone, or through a mail order
6 catalog for shipment to a consumer at a California address, if a warning is required Defendant shall
7 provide a warning in the same language as the label warning, in prominent type and face, displayed
8 next to the product image, before or after the product description, next to the product name or on the
9 order form. Alternatively, Defendant may provide a warning if required in the same language as the
10 label warning after a California consumer places an order and provides a California address for
11 shipment, so long as the warning is provided to the consumer before the product is shipped. Such
12 warnings shall be provided for all orders placed no later than May 1, 2009 or, for catalog sales, no
13 later than the next time that catalogs shipped to California addresses are prepared in the ordinary
14 course of business. Defendant shall not be obligated to provide, or to require a retailer or any other
15 person to provide, any in-store warnings for Product sold within the State of California, excepting
16 warnings on labels as set forth in Section 2.2.

17 2.5. Nothing in this Consent Judgment requires that warnings be given, or the other
18 obligations herein be discharged, for Product sold for use outside the State of California.

19 **3. PAYMENTS**

20 3.1 Defendant shall make the following payments within thirty days of entry of this Consent
21 Judgment:

- 22 a. \$500.00 in civil penalties pursuant to Health and Safety Code section 25249.7(b).
- 23 b. \$10,000.00 as reimbursement of the Plaintiff's costs in investigating, bringing and
24 resolving this action.

25 3.2 Payments (a) and (b) shall be made through delivery of two separate checks to Gene
26 J. Stonebarger, Lindsay & Stonebarger PC, 620 Coolidge Drive, Suite 225, Folsom, CA, 95630.
27 Plaintiff shall be responsible for remitting 75% of the \$500.00 payment to the State of California

1 pursuant to California Health & Safety Code section 25249.12.(b).

2 **4. MODIFICATION OF CONSENT JUDGMENT**

3 4.1. This Consent Judgment may be modified by written agreement of the Plaintiff and
4 Defendant, after noticed motion, including service upon the Office of the Attorney General, and
5 upon entry of a modified consent judgment by the court thereon, or as provided by law and upon
6 entry of a modified consent judgment by the court.

7 **5. ENFORCEMENT**

8 5.1. The Plaintiff may, by motion or application for an order to show cause before this
9 Court, enforce the terms and conditions contained in this Consent Judgment. In any such
10 proceeding, the Plaintiff may seek whatever fines, costs, penalties, or remedies are provided by law
11 for failure to comply with the Consent Judgment. Where said violations of this Consent Judgment
12 constitute violations of Proposition 65 or laws other than the claims released below in Section 7.1, or
13 concern products which are not Product, the Plaintiff is not limited to enforcement of the Consent
14 Judgment, but may seek in another action, whatever fines, costs, penalties, or remedies are provided
15 for by law for failure to comply with Proposition 65 or other laws. In any action brought by the
16 Plaintiff alleging subsequent violations of Proposition 65 or laws other than the claims released
17 below in Section 7.1, Defendant may assert any and all defenses that are available.

18 **6. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

19 6.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized by
20 the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
21 Consent Judgment on behalf of the party represented and legally to bind that party.

22 **7. CLAIMS COVERED**

23 7.1. This Consent Judgment is a full, final, and binding resolution between the Plaintiff
24 acting on his own behalf and on behalf of the People of the State of California, and Defendant, of
25 any violation of Proposition 65, or any other statutory or common law claims that have been or could
26 have been asserted in the Complaint against Defendant or its predecessors, successors, assigns,
27 corporate parents, subsidiaries, divisions, affiliates, along with the officers, directors, employees,

1 agents, principals, attorneys, insurers, and assigns of such persons or entities (“Released Parties”),
2 for failure to provide clear and reasonable warnings required by Proposition 65 of exposure to lead
3 to consumers from the use of the Products, by Defendant or by any entity to whom it distributes or
4 sells Product. As to Products, compliance with the terms of this Consent Judgment resolves and
5 releases any issue or claim now, in the past, and in the future concerning compliance by Defendant,
6 the Released Parties, their franchisees, cooperative members, and licensees, their distributors,
7 suppliers, and retailers who sell Products and the predecessors, successors, and assigns of any of
8 them, with the requirements of Proposition 65 that have been or could have been asserted in the
9 Complaint.

10 **8. RETENTION OF JURISDICTION**

11 8.1. This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

12 **9. PROVISION OF NOTICE**

13 9.1. When any party is entitled to receive any notice under this Consent Judgment, the notice
14 shall be sent by overnight courier service with a tracking and delivery verification system to the
15 person and address set forth in this Paragraph. Any party may modify the person and address to
16 whom the notice is to be sent by sending each other party notice. Said change shall take effect for
17 any notice mailed five days after the date delivery is acknowledged by the party receiving the
18 change.

19 9.2. Notices shall be sent to the following when required:

20 (i) For the Attorney General:

21 Edward G. Weil, Supervising Deputy Attorney General
22 1515 Clay St., 20th Floor.
23 Oakland, CA 94612
24 Telephone: (510) 622-2149
25 Facsimile: (510) 622-2270.

26 (ii) For Defendant:

27 Irene Fisher, Esq., General Counsel
28 Solgar, Inc.
2100 Smithtown Avenue
Ronkonkoma, New York 11779
Telephone: (631) 200-7327
Facsimile: (631) 218-7341.

Judith M. Praitis, Esq.
Amy P. Lally, Esq.
Sidley Austin LLP
555 West Fifth Street,
Los Angeles, CA 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600.

(iii) For Plaintiff:

Mr. David Cole
c/o Gene J. Stonebarger, Esq.
Lindsay & Stonebarger PC
620 Coolidge Drive, Suite 225
Folsom, CA 95630
Telephone: (916) 294-0002
Facsimile: (916) 294-0012.

10. COURT APPROVAL

10.1. This Consent Judgment shall be submitted to the Court by Plaintiff for entry by noticed motion. If this Consent Judgment is not approved by the Court, it shall be of no force or effect. Plaintiff shall comply with the obligations set forth at 11 Cal. Code Reg. §§ 3000 *et seq.*

11. EXECUTION IN COUNTERPARTS

11.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

Dated: 2/2/09

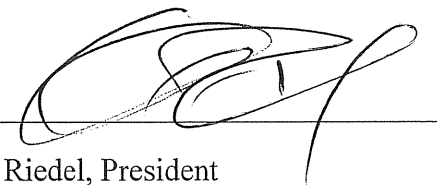
By:



David Cole

Dated:

By:



Karl Riedel, President

for Solgar, Inc.

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IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated:

JUDGE OF THE SUPERIOR COURT