

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

☒ Original Filing ☐ Supplemental Filing ☐ Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Chris Manthey, Benson Chiles				
	DEFENDANT(S) INVOLVED IN SETTLEMENT NOW Health Group, Inc.				
CASE INFO	COURT DOCKET NUMBER CGC-10-497334			COURT NAME San Francisco Superior Court	
	SHORT CASE NAME Manthey, et al v. CVS Pharmacy, et al.				
REPORT INFO	INJUNCTIVE RELIEF reformulation/warnings				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES		For Internal Use Only
			PAYMENT: OTHER \$50,000		
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		
			DATE SETTLEMENT SIGNED 07 / 11 / 2012		
COPY OF SETTLEMENT MUST BE ATTACHED					
FILER INFO	NAME OF CONTACT Laura J. Baughman				
	ORGANIZATION Baron & Budd, P.C.			TELEPHONE NUMBER ((214)) 521-3605	
	ADDRESS 3102 Oak Lawn Avenue, Suite 1100			FAX NUMBER ((214)) 520-1181	
	CITY Dallas		STATE TX	ZIP 75219-4281	E-MAIL ADDRESS lbaughman@baronbudd.com

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

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2 Rhonda S. Goldstein (SBN 250387)
Three Embarcadero Center, 7th Floor
3 San Francisco, CA 94111
Telephone: 415.471.3100
4 Facsimile: 415.471.3400
E-Mail: trent.norris@aporter.com
5 rhonda.goldstein@aporter.com

6 Attorneys for Defendant
7 NOW HEALTH GROUP, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

10 CHRIS MANTHEY; BENSON CHILES and
11 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

12 Plaintiffs,

13 v.

14 CVS PHARMACY, INC.; GENERAL
15 NUTRITION CORPORATION; NOW
HEALTH GROUP, INC.; OMEGA PROTEIN,
16 INC.; PHARMAVITE LLC; RITE AID
CORPORATION; SOLGAR, INC.; and
17 TWINLAB CORPORATION,

18 Defendants.

CASE NO. CGC-10-497334

**DEFENDANT NOW HEALTH GROUP,
INC.'S STATUTORY OFFER OF
COMPROMISE TO PLAINTIFFS (C.C.P.
§ 998)**

Dept.: 304
Judge: Hon. Richard A. Kramer
Trial Date: None set
Action Filed: March 2, 2010

1 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 Pursuant to Section 998 of the California Code of Civil Procedure, Defendant NOW Health
3 Group, Inc. ("Defendant") hereby offers to allow judgment to be entered against it in the above-
4 captioned matter for Fifty Thousand Dollars and No Cents (\$50,000.00) in satisfaction of all claims
5 for damages, restitution, costs, expenses and any other relief, including all prejudgment interest and
6 attorneys' fees, that Plaintiffs Chris Manthey and Benson Chiles ("Plaintiffs") seek or could have
7 sought in the above-captioned action. Set forth below are the details of the offered judgment into
8 which Defendant is willing to enter:

9 1. Beginning with the date that is thirty (30) days after the Court's entry of judgment
10 pursuant to this Offer of Compromise, Defendant shall no longer directly sell in or directly ship to
11 California any of the following three products identified in Plaintiffs' August 6, 2009 Sixty-Day
12 Notice of Violation to Defendant that do not meet a daily exposure limit for polychlorinated
13 biphenyls ("PCBs") of 290 nanograms per day, based on the maximum daily dosage recommended
14 on the product label, unless such product is accompanied by a clear and reasonable Proposition 65
15 warning: 1) Double Strength Cod Liver Oil 650 MG/100 Softgels UPC Code 733739 107406; 2)
16 Salmon Oil 100 Softgels UPC Code 733739 016706; 3) Shark Liver Oil 400 MG 120 Softgels UPC
17 Code 733739 003256 (collectively, the "Covered Products").

18 2. In the event that either a) one or both of the Plaintiffs subsequently agrees in a
19 settlement or judicially-entered injunction or consent judgment pursuant to Proposition 65 to a less
20 stringent standard for PCBs in fish oils, fish liver oils, shark or squid oils, shark liver oils, and/or
21 other oils containing EPA and/or DHA Omega-3s ("Fish Oil Products") than set forth in Paragraph
22 1 above, or b) the California Office of Environmental Health Hazard Assessment ("OEHHA")
23 subsequently establishes a "safe harbor" regulatory level for PCBs in Fish Oil Products that is less
24 stringent than set forth in Paragraph 1 above, Defendant shall automatically, with no further action
25 needed on Defendant's part, be entitled to comply with such less stringent standard with respect to
26 Defendant's California sales of the Covered Products.

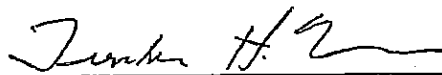
1 Said offer shall remain open for acceptance by Plaintiffs for thirty (30) days from the date of
2 service hereof, and if not accepted within that time or by the commencement of trial, whichever
3 occurs first, it shall be deemed withdrawn and cannot be given in evidence upon the trial.
4 Plaintiffs may accept this offer by having their counsel sign the attached statement that the offer is
5 accepted and returning it to Defendant's counsel. *See* Cal. Civ. Proc. Code § 998(b). Because the
6 stated amount of this offer is inclusive of attorneys' fees and costs incurred up to the date of the
7 offer, acceptance of this offer and the stated amount constitutes an agreement that each party will
8 bear its own costs and expenses, including attorneys' fees. Furthermore, to the extent that Mateel
9 Environmental Justice Foundation, or its attorneys, claims any relief or entitlement to any attorneys'
10 fees, costs, or other monetary relief in this action, Plaintiffs and their counsel agree to hold
11 Defendant harmless against any such claims.

12 The parties acknowledge that Proposition 65 requires court approval of this proposed
13 settlement and therefore Plaintiffs' acceptance of this offer entails an agreement of the parties to
14 cooperate in seeking Court approval of the proposed judgment.

15 WARNING: Failure to accept this offer can result in Plaintiffs being unable to recover costs
16 of suit or attorney's fees in this action incurred after this offer. Failure to accept this offer can also
17 result in Plaintiffs being ordered to pay Defendant's costs incurred after this offer, which may
18 include Defendant's reasonable expert witness fees for case preparation and trial testimony, and
19 may include, if the statutory factors are met, Defendant's attorneys' fees. *See* Cal. Civ. Proc. Code
20 § 998 (c)(1).

21 DATED: July 10, 2012

22 ARNOLD & PORTER LLP

23 By: 
24 TRENTON H. NORRIS

25 Attorneys for Defendant
26 NOW HEALTH GROUP, INC.
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Dated: July 11, 2012

By:

Attorney for Plaintiffs

CHRIS MANTHEY and BENSON CHILES

1 **PROOF OF SERVICE**

2 I am over eighteen years of age and not a party to this action. I am employed in the County
3 of San Francisco, State of California. My business address is Three Embarcadero Center, 7th Floor,
4 San Francisco, California 94111.

5 On July 10, 2012, I served the following document(s):

6 **DEFENDANT NOW HEALTH GROUP, INC.'S STATUTORY OFFER OF**
7 **COMPROMISE TO PLAINTIFFS (C.C.P. § 998)**

8 I served the document(s) on the following person(s):

9 April M. Strauss
10 Law Office of April Strauss
2500 Hospital Drive, Suite 3B
Mountain View, CA 94040
11 aprilstrauss@sbcglobal.net

Laura Baughman
Baron & Budd, PC
3102 Oak Lawn Ave., Suite 1100
Dallas, TX 75219-4281
lbaughman@baronbudd.com

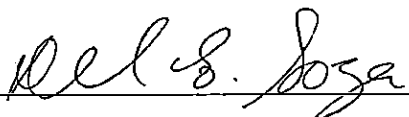
12 The documents were served by the following means:

13 **By Electronic Service (E-mail).** Based on a court order or an agreement of the parties to
14 accept service by electronic transmission, I transmitted the document(s) and a copy of this
15 declaration to the person(s) at the electronic notification address(es) listed above on July 10, 2012
16 before 5:00 p.m. PST. I did not receive, within a reasonable time after the transmission, any
17 electronic message or other indication that the transmission was unsuccessful.

18 **By U.S. Mail.** I enclosed the documents in a sealed envelope or package addressed to the
19 person at the address listed above and placed the envelopes for collection and mailing, following
20 our ordinary business practices. I am readily familiar with this business' practice for collecting and
21 processing correspondence for mailing. On the same day the correspondence is placed for
22 collection and mailing, it is deposited in the ordinary course of business with the United States
23 Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county where
24 the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

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

27 Dated: July 10, 2012

Signature: 

Type or Print Name: Delicia E. Soza