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14 Attorneys for Plaintiffs  
15 Chris Manthey and Benson Chiles

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **COUNTY OF SAN FRANCISCO**

18 CHRIS MANTHEY and BENSON CHILES, )

Case No.: CGC-10-497334

19 Plaintiffs,

20 vs.

**[PROPOSED] CONSENT JUDGMENT AS  
TO TWINLAB CORPORATION, ET AL.;  
ORDER**

21 CVS PHARMACY, INC.; GENERAL  
22 NUTRITION CORPORATION; NOW  
23 HEALTH GROUP, INC.; OMEGA  
24 PROTEIN, INC.; PHARMAVITE LLC; RITE  
25 AID CORPORATION; SOLGAR, INC.; and  
26 TWINLAB CORPORATION,

27 Defendants.

28 **I. INTRODUCTION**

1.1 On March 2, 2010, Chris Manthey and Benson Chiles (collectively, "Plaintiffs"), acting in the public interest, filed a complaint for civil penalties and injunctive relief in San Francisco Superior Court, Case No. 497334 ("Complaint") against CVS Pharmacy, Inc., General Nutrition Corp., NOW Health Group, Inc., Omega Protein, Inc., Rite Aide Corp., Solgar, Inc., and Twinlab Corp. (collectively, "Defendants"). In their Complaint, Plaintiffs

1 allege that Defendants manufactured, packaged, distributed, marketed and/or sold dietary  
2 supplements made from fish oils, fish liver oils, shark oils, and/or shark liver oils (“Products”)  
3 for human consumption containing the Proposition 65 listed chemical polychlorinated biphenyls  
4 (“PCBs”) in an amount that violated the provisions of Health & Safety Code §§ 25249.5 *et seq.*  
5 (“Proposition 65”) by knowingly and intentionally exposing persons to a chemical known to the  
6 State of California to cause reproductive toxicity and cancer, namely PCBs, without first  
7 providing a clear and reasonable warning to such individuals. This Consent Judgment resolves  
8 Plaintiffs claims against Twinlab Corporation, Twinlab Corporation d/b/a ISI Brands, Inc. and  
9 d/b/a Metabolife, Corp., Idea Sphere, Inc., and Natural 2U LLC (collectively, “Settling  
10 Defendants”). The Products covered by this Consent Judgment are described in Exhibit A  
11 attached hereto (the “Dietary Supplement Products”). If Plaintiff in the future inquires whether  
12 a Product is a Dietary Supplement Product subject to this Consent Judgment, Settling  
13 Defendants shall respond promptly (and in any event within fourteen (14) days of the inquiry)  
14 to Plaintiff’s inquiry.

15       **1.2** For purposes of this Consent Judgment only, Plaintiffs and Settling Defendants  
16 (hereafter referred to as the “Parties”), stipulate that this Court has jurisdiction over allegations  
17 of violations contained in the Complaint and personal jurisdiction over the Settling Defendants  
18 as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco, and  
19 that this Court has jurisdiction to enter this Consent Judgment as a resolution of all claims  
20 which could have been raised in the Complaint based on the facts alleged therein. Each Settling  
21 Defendant employs ten (10) or more employees. More than sixty (60) days have lapsed since  
22 Plaintiff issued a notice of violation of Proposition 65 letter dated August 6, 2009, and no public  
23 prosecutor has commenced a legal action or intervened in Plaintiff’s suit. A copy of the notice  
24 of violation letter and Complaint appear at Exhibit B.

25       **1.3** Each Settling Defendant denies the allegations set forth in the Complaint.

26       **1.4** For the purpose of avoiding prolonged and costly litigation, the Parties enter into  
27 this Consent Judgment as a full settlement of all claims that were raised in the Complaint based  
28 on the facts alleged therein, or which could have been raised in the Complaint arising out of the

1 facts alleged therein. By execution of this Consent Judgment, no Settling Defendant admits  
2 any violation of Proposition 65 or any other law and specifically denies that it has committed  
3 any such violations and maintains that all dietary supplement products that it has sold and  
4 distributed in California have been and are in compliance with all laws. Nothing in this Consent  
5 Judgment shall be construed as an admission by any Settling Defendant of any fact, finding,  
6 conclusion, issue of law, or violation of law, nor as an admission that any monitoring, testing, or  
7 labeling obligations herein have any applicability except with respect to compliance with  
8 Proposition 65 respecting products sold within the State of California to California consumers.  
9 However, this paragraph shall not diminish or affect the responsibilities and duties of the Parties  
10 under this Consent Judgment.

## 11 **II. MONITORING**

12       **2.1**       Settling Defendants shall monitor PCBs levels to which California consumers  
13 are exposed in the Dietary Supplement Products. In monitoring such levels, Settling  
14 Defendants shall be entitled to conduct, or have conducted on their behalf, laboratory testing for  
15 PCBs, rely on the test results their raw, intermediate or bulk material suppliers provide, rely on  
16 test results their contract manufacturers provide and rely on additional relevant information  
17 (such as whether oils have been subject to molecular distillation or other processing to reduce  
18 impurities) to establish PCB levels for purposes of this Consent Judgment in the Dietary  
19 Supplement Products. The laboratory testing for purposes of this Section 2.1 may be conducted  
20 pursuant to US EPA Method 8082A, US EPA Method 1668 or 1668A or any other laboratory  
21 test method routinely employed in the United States, Canada or European countries to document  
22 PCB levels (or specific PCB congeners) in Products. The data and information on which a  
23 Settling Defendant relies shall be maintained for at least two (2) years after a Dietary  
24 Supplement Product is manufactured, distributed or sold (whichever is the latest date) by a  
25 Settling Defendant.

26       **2.2**       A determinative level of PCBs in any Dietary Supplement Product for purposes  
27 of this Consent Judgment shall be established if a Settling Defendant conducts, or has  
28 conducted on its behalf, testing of a minimum of three (3) and a maximum of ten (10) samples

1 (at a Settling Defendant's discretion) from different lots or bulks using US EPA Method 8082A.  
2 The determinative level shall be the arithmetic mean (average) of the samples so tested. The  
3 determinative level shall be the level evaluated to determine compliance with the obligations of  
4 this Consent Judgment, including Section 3.1 below. The determinative level for a given  
5 Dietary Supplement Product may be established at any time and the Parties expressly  
6 contemplate that in the event of a dispute regarding the determinative level, the Settling  
7 Defendant shall be afforded an opportunity prior to enforcement of this Consent Judgment to  
8 supplement the existing test data and information on hand pursuant to Section 2.1 as set forth in  
9 this Section 2.2.

10       **2.3** All data generated in compliance with Sections 2.1 and 2.2 herein shall be  
11 available to Plaintiffs within thirty (30) days of request therefor by Settling Defendant's  
12 delivering the information to Laura Baughman at Baron & Budd, P.C., 3102 Oak Lawn Ave.,  
13 Suite 1100, Dallas, TX 75219 ([lbaughman@baronbudd.com](mailto:lbaughman@baronbudd.com)). Plaintiffs shall not request such  
14 data more often than once per calendar year, unless good cause is shown to request data more  
15 frequently. No test data or other information need be maintained or delivered to Plaintiff  
16 corresponding to the time period a Dietary Supplement Product carries a warning as provided  
17 for in Section 3.1. Plaintiffs shall keep all such information and data confidential except as is  
18 necessary to contest whether the warning obligation of Section 3.1 below has been violated, and  
19 if such data or information is required to be presented to the Court, Plaintiff shall do so under  
20 seal or take alternative measures to preserve the confidentiality of the data or information.

### 21 **III. CLEAR AND REASONABLE WARNINGS**

#### 22 **3.1 Warning Standard**

23 Beginning with the date that is ninety (90) days after the Effective Date of this Consent  
24 Judgment (the "Compliance Date"), each Settling Defendant shall not manufacture for sale in  
25 the State of California, distribute into the State of California, or sell directly to a consumer in  
26 the State of California any Dietary Supplement Product that exceeds an exposure limit for  
27 polychlorinated biphenyls ("PCBs") of 290 nanograms per day for birth defects and  
28 reproductive harm, or exceeds the exposure limit for PCBs of 350 nanograms per day for

1 cancer, based on the maximum daily dosage recommended on the Dietary Supplement Product  
2 label, unless a warning is placed on the packaging, labeling or directly to or on the Product that  
3 states:

4 “[CALIFORNIA PROPOSITION 65] WARNING:

5 This product contains polychlorinated biphenyls (“PCBs”), a chemical known [to the  
6 State of California] to cause cancer, birth defects, or other reproductive harm.”

7 (hereinafter, “Product Label Warning”). The text in [brackets] is optional in a Settling  
8 Defendant’s sole discretion. To ensure accuracy in the warning text, a Settling Defendant may  
9 omit either the word “cancer” or the phrase “birth defects, or other reproductive harm”  
10 depending on whether the level of PCBs in the Dietary Supplement Product exceed only the  
11 warning trigger level for cancer, or exceed only the warning trigger level for birth defects and  
12 reproductive harm, or exceed the warning trigger levels for both cancer and birth defects or  
13 other reproductive harm. The Parties acknowledge that the warning trigger levels for PCBs  
14 may change over time and a Settling Defendant accordingly may adjust the warning text for  
15 purposes of accuracy. Product Label Warnings shall be placed with such conspicuousness as  
16 compared with other words, statements, designs and/or devices on the labeling as to render it  
17 likely to be read and understood by an ordinary individual under customary conditions of use or  
18 purchase. If the warning is displayed on the Product’s container or labeling, the warning shall  
19 be at least the same size as the largest of any other health or safety warnings on the Product’s  
20 container or labeling, and the word “warning” shall be in all capital letters and in bold print. If  
21 printed on the labeling, the warning shall be contained in the same section of the labeling that  
22 states other safety warnings concerning the use of the Product. A Settling Defendant may affix  
23 a sticker or a hang tag on each unit of a Dietary Supplement Product packaged in final form for  
24 consumer purchase to deliver the warning, if required, provided the sticker is affixed in a  
25 location a consumer is likely to see prior to first use.

26 **3.2 Mail Order Sales**

27 For any mail order sales by a Settling Defendant, the warning language required under  
28 this Consent Judgment shall also be included in the mail order catalogue, either on the same

1 page as any order form, or on the same page upon which the Dietary Supplement Product's  
2 price is listed, in the same type size as the surrounding, non-heading text. Required warning  
3 text, if any, shall be added in the next print run of a catalogue which is scheduled in the ordinary  
4 course of business at least forty-five (45) days after entry of this Consent Judgment.

### 5           **3.3     Internet Sales**

6           For internet sales by a Settling Defendant of Dietary Supplement Products subject to the  
7 warning requirements of Section 3.1, the warning language required under this Consent  
8 Judgment shall be displayed in the same type size as the surrounding, non-heading text, either:  
9 (a) on the same page upon which the Dietary Supplement Product is displayed or referenced; (b)  
10 on the same page as the order form for the Dietary Supplement Product; (c) on the same page as  
11 the price for the Dietary Supplement Product is displayed; or (d) in a dialogue box which  
12 appears when a California address for delivery is provided by the consumer, so long as the  
13 dialogue box appears prior to the completion of the internet sale and requires the consumer to  
14 affirmatively accept receipt of the warning set forth in the dialogue box (which shall be  
15 displayed in the same type size as the surrounding, non-heading text on the screen at the time of  
16 the appearance of the dialogue box), as a condition precedent to completing the sale.

17           **3.4**     Any non-discretionary changes to the language or format of the warnings  
18 required herein shall be made only after Court approval or obtaining Plaintiffs' and the  
19 California Attorney General's approval. If any Settling Defendant requests a non-discretionary  
20 change in language or format of the warnings and neither Plaintiffs nor the Attorney General  
21 respond to that request within forty-five (45) days, then that Settling Defendant may move the  
22 Court via a noticed motion to modify this Consent Agreement. The Parties agree that  
23 adjustments to the warning text for accuracy if warning trigger levels for PCBs change due to  
24 either Plaintiff or the Office of Environmental Health Hazard Assessment adopting (as set forth  
25 in Section 3.6) final "safe harbor" figures which are higher than 290 ug/day shall be deemed a  
26 discretionary change.

27           **3.5**     Each Settling Defendant's compliance with Sections 3.1 through 3.4 of this  
28 Consent Judgment shall fully and completely satisfy such Settling Defendant's obligations

1 under Proposition 65 with respect to PCBs in the Dietary Supplement Products and,  
2 additionally, all sales to California consumers of such Dietary Supplement Products by any  
3 person shall be deemed to be in compliance with Proposition 65 with respect to PCBs. For the  
4 avoidance of doubt, the Parties expressly agree sales of any Dietary Supplement Products any  
5 Settling Defendant already has manufactured, or distributed or sold prior to the Compliance  
6 Date shall not constitute a violation of this Consent Judgment, even if sales to, or use by,  
7 California consumers of such Dietary Supplement Products occur after the Compliance Date.

8       **3.6** In the event that either a) one or both of the Plaintiffs subsequently agree in a  
9 settlement or judicially-entered injunction or consent judgment pursuant to Proposition 65 to a  
10 less stringent standard for PCBs in Products than set forth in Paragraph 3.1 above, or b) the  
11 California Office of Environmental Health Hazard Assessment (“OEHHA”) subsequently  
12 establishes “safe harbor” warning trigger levels for PCBs in Products (including the Dietary  
13 Supplement Products) that are higher than the level set forth in Paragraph 3.1 above, Settling  
14 Defendants shall automatically, with no further action needed on Settling Defendants’ part, be  
15 entitled to adopt such higher warning trigger level with respect to sales to California consumers  
16 of the Dietary Supplement Products by Settling Defendants or any other person.

17 **IV. MONETARY RELIEF**

18       **4.1** Settling Defendants shall pay Plaintiffs a total of \$137,500.00 (“Settlement  
19 Proceeds”) in two equal installments. The first installment amount of \$68,750.00 shall be paid  
20 within thirty (30) days of the Effective Date and the second installment shall be paid within  
21 sixty (60) days of the Effective Date. The Settlement Proceeds shall be made payable to Baron  
22 & Budd, P.C. and delivered to Laura Baughman at Baron & Budd, P.C., 3102 Oak Lawn Ave.,  
23 Suite 1100, Dallas, Texas 75219. Of the Settlement Proceeds, \$3,000.00 shall be deemed a  
24 Civil Penalty. The Civil Penalty shall be deemed paid in the first installment. Plaintiffs shall  
25 bear all responsibility for apportioning and paying to the State of California any portion of the  
26 Settlement Proceeds as required by California Health & Safety Code § 25249.12(d), and no  
27 Settling Defendant shall have any liability if payments to the State of California are not made by  
28 Plaintiffs.

1           **4.2**     The payment made pursuant to Section 4.1 shall be the only monetary obligation  
2 of the Settling Defendants with respect to this Consent Judgment, including as to any fees,  
3 costs, or expenses Plaintiffs have incurred in relation to this action and Plaintiffs hereby jointly  
4 and severally expressly release claims, if any, for any additional sums from Settling Defendants.

5     **V.     COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6           Plaintiffs agree to comply with the reporting requirements referenced in California  
7 Health & Safety Code § 25249.7(f). Pursuant to the regulations promulgated under that section,  
8 Plaintiffs shall present this Settlement to the California Attorney General's Office within five  
9 (5) days after receipt of all necessary signatures. The Parties acknowledge that, pursuant to  
10 Health & Safety Code § 25249.7, a noticed motion must be filed to obtain judicial approval of  
11 the Consent Judgment. Accordingly, a motion for approval of the settlement shall be prepared  
12 and filed by Plaintiffs within a reasonable period of time after the date this Consent judgment is  
13 signed by all Parties. Plaintiffs agree to serve a copy of the noticed motion to approve and enter  
14 the Consent Judgment on the Attorney General's Office at least forty-five (45) days prior to the  
15 date set for hearing of the motion in the Superior Court of the City and County of San  
16 Francisco.

17     **VI.    MODIFICATION OF SETTLEMENT**

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

24     **VII.   APPLICATION OF CONSENT JUDGMENT**

25           **7.1**     Each signatory to this Consent Judgment certifies that he or she is fully  
26 authorized by the Party that he or she represents to enter into and execute the Consent Judgment  
27 on behalf of the Party represented and legally bind that Party.  
28



1           **7.2**     This Consent Judgment shall apply to and be binding upon Plaintiffs and each of  
2 the Settling Defendants, their officers, directors, and shareholders, divisions, subdivisions,  
3 parent entities or subsidiaries, and successors or assigns of each of them.

4     **VIII. CLAIMS COVERED**

5           **8.1**     This Consent Judgment is a final and binding resolution between Plaintiffs,  
6 including Plaintiffs in their representative capacity in the interest of the general public, and the  
7 Settling Defendants, of any violation of Proposition 65 or any other statutory or common law  
8 claim that could have been asserted against the Settling Defendants for failure to provide clear,  
9 reasonable and lawful warnings of exposures to PCBs that result from ingestion of the Dietary  
10 Supplement Products. No claim is reserved as between the Parties hereto, and Plaintiffs in their  
11 individual capacities and Settling Defendants expressly waive any and all rights which they may  
12 have under Section 1542 of the Civil Code of the State of California, which provides:

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

16           **8.2     Plaintiffs' Release of Settling Defendants**

17           In further consideration of the promises and agreements herein contained, and for the  
18 payment to be made pursuant to Section 4.1, Plaintiffs, on behalf of themselves, their past and  
19 current agents, representatives, attorneys, successors and/or assignees, and Plaintiffs, in their  
20 representative capacity in the interest of the general public, hereby release and waive all rights  
21 to institute or participate in, directly or indirectly, any form of legal action addressing any and  
22 all claims occurring on or before the entry of this Consent Judgment, and release all claims  
23 occurring on or before the entry of this Consent Judgment, including, without limitation, all  
24 actions, causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
25 costs, fines, penalties, losses or expenses, including, but not limited to, investigation fees, expert  
26 fees and attorneys' fees of any nature whatsoever, whether known or unknown, fixed or  
27 contingent against each of the Settling Defendants and each of their suppliers, contract  
28 manufacturers, owners, parent companies, corporate affiliates, subsidiaries, distributors,

1 retailers and their respective officers, directors, attorneys, representatives, shareholders, agents,  
2 and employees arising under Proposition 65 related to each Settling Defendant's alleged failure  
3 to warn about exposures to or identification of PCBs contained in the Dietary Supplement  
4 Products.

5 Plaintiffs, on behalf of themselves, their past and current agents, representatives,  
6 attorneys, successors and/or assignees, and Plaintiffs, in their representative capacity in the  
7 interest of the general public, and the Settling Defendants further agree and acknowledge that  
8 this Consent Judgment is a full, final, and binding resolution of any violations occurring on or  
9 before the entry of this Consent Judgment by each of the Settling Defendants and each of their  
10 suppliers, contract manufacturers, owners, parent companies, corporate affiliates, subsidiaries,  
11 distributors, retailers and their respective officers, directors, attorneys, representatives,  
12 shareholders, agents, and employees, of Proposition 65 that have been or could have been  
13 asserted for the failure to provide clear and reasonable warnings of exposure to or identification  
14 of PCBs contained in the Dietary Supplement Products manufactured, or distributed or sold by a  
15 Settling Defendant.

16 In addition, Plaintiffs, on behalf of themselves, their attorneys and agents, release and  
17 waive all rights to institute or participate in, directly or indirectly, any form of legal action  
18 addressing any and all claims occurring on or before the entry of this Consent Judgment, and  
19 release all claims occurring on or before the entry of this Consent Judgment against the Settling  
20 Defendants arising under Proposition 65 related to each of the Settling Defendants' alleged  
21 failure to warn about exposures to or identification of PCBs contained in the Dietary  
22 Supplement Products and for all actions or statements regarding the alleged failures to warn  
23 about exposures to or identification of PCBs contained in the Dietary Supplement Products  
24 made by each of the Settling Defendants or its attorneys or representatives in the course of  
25 responding to those alleged violations of Proposition 65 as alleged in the Complaint. For the  
26 avoidance of doubt, Plaintiffs expressly agree that all of the foregoing releases, waivers,  
27 agreements and acknowledgments in Sections 8.1 and 8.2, including those made by Plaintiffs in  
28 their representative capacity in the interest of the general public, apply to sales of any Dietary

1 Supplement Products any Settling Defendant already has manufactured, or distributed or sold  
2 prior to the Compliance Date, even if sale to, or use by, California consumers of such Dietary  
3 Supplement Products occur after the Compliance Date.

4 **8.3 Release of Plaintiffs**

5 Each Settling Defendant waives all rights to institute any form of legal action against  
6 Plaintiffs or their officers, employees, agents, attorneys or representatives, for all actions taken  
7 or statements made or undertaken by Plaintiffs and their officers, employees, agents, attorneys  
8 or representatives, in the course of seeking enforcement of Proposition 65 in this action.

9 **IX. RETENTION OF JURISDICTION**

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

11 **X. COURT APPROVAL AND EFFECTIVE DATE**

12 If this Consent Judgment is not approved by this Court, it shall be of no force or effect  
13 and cannot be used in any proceeding for any purpose. This Consent Judgment shall become  
14 effective on the date entered by the Court (the "Effective Date").

15 **XI. ENFORCEMENT**

16 In the event that a dispute arises with respect to any provisions of this Consent  
17 Judgment, the Parties shall meet and confer within thirty (30) days of receiving written notice of  
18 the alleged violation from another party. In the event that the Parties are unable to resolve their  
19 dispute through the meet and confer process, this Consent Judgment may be enforced using any  
20 available provision of law.

21 **XII. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of  
23 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
24 reason of law generally, or as to the Dietary Supplement Products specifically, then the Settling  
25 Defendants shall have no further obligations pursuant to this Consent Judgment with respect to  
26 those Products that are so affected.

27  
28

1 **XIII. EXCHANGE IN COUNTERPARTS**

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

5 **XIV. NOTICES**

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

12 Whenever notice or a document is required to be sent to Plaintiffs, it shall be sent to:

13 Laura J. Baughman, Esq.  
14 Baron & Budd, P.C.  
15 3102 Oak Lawn Avenue, Suite 1100  
Dallas, TX 75219

16 Whenever notice or a document is required to be sent to a Settling Defendant, it shall be  
17 sent to:

18 Judith M. Praitis, Esq.  
19 Sidley Austin, LLP  
20 555 West Fifth St., Suite 4000  
Los Angeles, CA 90013

Richard H. Neuwirth, Esq.  
General Counsel  
IdeaSphere, Inc.  
632 Broadway, Suite 201  
New York, New York 10012

21 **XV. SEVERABILITY**

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

25 **XVI. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the  
27 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
28

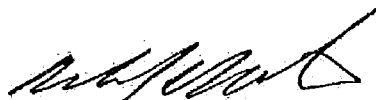
1 negotiations, commitments, and understandings related hereto. No representations, oral or  
2 otherwise, express or implied, other than those contained herein have been made by any Party  
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
4 deemed to exist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

5 **XVII. ASSIGNMENT**

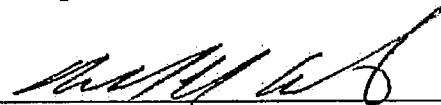
6 A Settling Defendant may assign its obligations under this Consent Judgment, subject to  
7 approval by the Court on a noticed motion. Notice of a request for assignment shall be served  
8 on Plaintiffs and the Attorney General of the State of California.

9  
10 **APPROVED AS TO SUBSTANCE:**

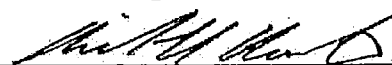
11  
12 Dated: 8/21/12

  
\_\_\_\_\_  
Idea Sphere, Inc.

14  
15 Dated: 8/21/12

  
\_\_\_\_\_  
Twinlab Corporation  
Twinlab Corporation d/b/a ISI Brands, Inc.  
Twinlab Corporation d/b/a Metabolife Corp.

17  
18 Dated: 8/21/12

  
\_\_\_\_\_  
Natural 2U LLC

20  
21 Dated: \_\_\_\_\_

\_\_\_\_\_  
Chris Manthey

23  
24 Dated: \_\_\_\_\_

\_\_\_\_\_  
Benson Chiles

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

**XVII. ASSIGNMENT**

A Settling Defendant may assign its obligations under this Consent Judgment, subject to approval by the Court on a noticed motion. Notice of a request for assignment shall be served on Plaintiffs and the Attorney General of the State of California.

**APPROVED AS TO SUBSTANCE:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Idea Sphere, Inc.


Dated: \_\_\_\_\_

\_\_\_\_\_  
Twinlab Corporation  
Twinlab Corporation d/b/a ISI Brands, Inc.  
Twinlab Corporation d/b/a Metabolife Corp.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Natural 2U LLC

Dated: 8/23/12

  
\_\_\_\_\_  
Chris Manthey

Dated: \_\_\_\_\_

\_\_\_\_\_  
Benson Chiles

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

5 **XVII. ASSIGNMENT**

6 A Settling Defendant may assign its obligations under this Consent Judgment, subject to  
7 approval by the Court on a noticed motion. Notice of a request for assignment shall be served  
8 on Plaintiffs and the Attorney General of the State of California.

9  
10 **APPROVED AS TO SUBSTANCE:**

11  
12 Dated: \_\_\_\_\_

\_\_\_\_\_ Idea Sphere, Inc.

13  
14  
15 Dated: \_\_\_\_\_

\_\_\_\_\_ Twinlab Corporation  
Twinlab Corporation d/b/a ISI Brands, Inc.  
Twinlab Corporation d/b/a Metabolife Corp.

16  
17  
18 Dated: \_\_\_\_\_

\_\_\_\_\_ Natural 2U LLC

19  
20  
21 Dated: \_\_\_\_\_

\_\_\_\_\_ Chris Manthey

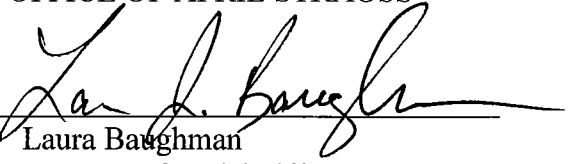
22  
23  
24 Dated: 0/22/12

W. B. Chiles  
Benson Chiles

1  
2 **APPROVED AS TO FORM:**  
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4 Dated: 8/24/2012  
5

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

6  
7 By:   
8 Laura Baughman  
9 Attorneys for Plaintiffs

10 Dated: \_\_\_\_\_  
11

Sidley Austin, LLP

12 By: \_\_\_\_\_  
13 Judith M. Praitis  
14 Attorneys for Defendants  
15  
16  
17  
18  
19

20 **APPROVED AND ORDERED:**  
21

22 Dated: \_\_\_\_\_  
23

\_\_\_\_\_  
24 Honorable Richard A. Kramer  
25 Judge of the Superior Court  
26 Department 304  
27  
28



1  
2 **APPROVED AS TO FORM:**

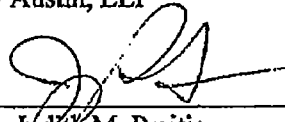
3  
4 Dated: \_\_\_\_\_

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

6  
7 By: \_\_\_\_\_  
Laura Baughman  
Attorneys for Plaintiffs

9  
10 Dated: \_\_\_\_\_

Sidley Austin, LLP

11  
12 By:   
Judith M. Pratis  
Attorneys for Defendants

13  
14  
15  
16  
17  
18  
19  
20 **APPROVED AND ORDERED:**

21  
22 Dated: \_\_\_\_\_

Honorable Richard A. Kramer  
Judge of the Superior Court  
Department 304

EXHIBIT A – “DIETARY SUPPLEMENT PRODUCTS”

The Dietary Supplement Products shall be all fish oils, fish, shark or cod liver oils, shark or squid oils, krill oil, algae oils and other oils containing eicosapentaenoic acid (“EPA”) and/or docosahexaenoic acid (“DHA”) for human consumption containing the Proposition 65 listed chemical polychlorinated biphenyls (“PCBs”) which are manufactured, or distributed or sold by or on behalf of a Settling Defendant, whether manufactured, or distributed or sold prior to, or subsequent to entry of, this Consent Judgment.

Dietary Supplement Products include those sold under a brand or trademark owned or licensed for use by a Settling Defendant, and those “private label” products which a Settling Defendant manufactures, distributes or sells to third parties; provided, however, that for products sold to third parties the Settling Defendant prepares or approves the dose, serving size or consumer use instructions on the label which appear on the containers sold for direct consumer use of such products.

EXHIBIT B—NOTICE LETTER and COMPLAINT

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August 6, 2009

EDWARD G. WEIL  
DEPUTY ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 70550  
OAKLAND CA 94612-0550

Re: Notice of Violation of Cal. Health & Safety Code § 25249.6 (PCB Exposure)

Greetings:

The Mateel Environmental Justice Foundation ("Mateel"), Chris Manthey and Benson Chiles give you notice that the private businesses listed on the attached Service List have been, are, will be and threaten to be in violation of Cal. Health & Safety Code §25249.6. Mateel, Mr. Manthey and Mr. Chiles are private enforcers of Proposition 65, all may be contacted at the below listed address and telephone number. I am a responsible individual at Mateel. The Noticing Parties are also represented by David Roe. Mr. Roe may be reached at: Law Offices of David Roe, 1061 Walker Ave, Oakland, CA 94610, (510) 465-5860. The above referenced violations occur and have occurred when people ingest dietary supplements that are made wholly, or partly, from fish oil ("fish oil dietary supplements"). Some examples of these types of products are: cod liver oil, Omega -3 oils, supplements made from fish body oils, EPA fish oil concentrates, fish oil concentrates, and DHA fish oil supplements. Specific examples of these types of products are listed in the enclosed Product List. Though a specific variety or brand is mentioned, or an item, SKU or product number is provided as an example, this notice pertains to all kinds, and all variations, of the specific type of fish oil supplement of which the named variety is an example. These fish oil dietary supplements come in caplet form or are spooned out of a bottle. Each and every one of these fish oil dietary supplements exposes the people who take them to polychlorinated biphenyls ("PCBs") via the ingestion, dermal absorption and absorption through mucous membrane routes. The listed companies did not and do not provide people with clear and reasonable warnings before they expose them to PCBs. The above referenced violations have occurred every day since at least August 6, 2006 and will continue every day until the PCBs are taken out of these products or until warnings are given.

Cordially,

A handwritten signature in black ink, appearing to read "W. Verick".

William Verick

424 First Street, Eureka, CA 95501 • 707.268.8900 (phone) 707.268.8901 (fax)

## SERVICE LIST

EDWARD G. WEIL DEPUTY ATTORNEY GENERAL OFFICE OF THE ATTORNEY GENERAL P.O. BOX 70550 OAKLAND, CA 94612-0550	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF GLERN P.O. BOX 430 WILLOWS, CA 95588	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTEREY 140 CHURCH STREET P.O. BOX 1131 SALINAS, CA 95302	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SISKIYOU P.O. BOX 986 YREKA, CA 96097	KARL RIEDEL, PRESIDENT SOLGAR, INC. 2100 SMITH TOWN AVENUE ROCKY HILL, CT 06117
OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND 505 14TH ST. 12TH FLOOR OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HUMBOLDT 825 5TH ST. EUREKA, CA 95501	COUNTY OF NAPA 931 PARKWAY MALL P.O. BOX 720 NAPA, CA 94559-0720	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SOLANO 600 UNION AVE FAIRFIELD, CA 94533	WILLIAM W. NICHOLSON, CEO TWINLAB CORPORATION 632 BROADWAY 11TH FL. NEW YORK, NY 10012
OFFICE OF THE CITY ATTORNEY CITY OF SAN FRANCISCO CITY HALL ROOM 206 400 VAN NESS SAN FRANCISCO, CA 94102	COUNTY OF IMPERIAL COURTHOUSE, FLOOR 2 939 W. MAIN ST. EL CENTRO, CA 92243	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NEVADA 110 UNION STREET NEVADA CITY, CA 95959	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SONOMA 600 ADMINISTRATION DR. #2121 SANTA ROSA, CA 95403	
OFFICE OF THE CITY ATTORNEY CITY OF SACRAMENTO PO BOX 1948 SACRAMENTO, CA 95812-1948	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF INYO P.O. DRAWER D INDEPENDENCE, CA 93526	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ORANGE 401 CIVIC CENTER DR. WEST SANTA ANA, CA 92701	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF STANISLAUS 1100 I ST. #200 MODESTO, CA 95354	
OFFICE OF THE CITY ATTORNEY CITY OF SAN JOSE 200 EAST SANTA CLARA STREET SAN JOSE, CA 95113	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KERN 1215 TRUXTON AVE. FLOOR 4 BAKERSFIELD, CA 93301	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLACER 11567 B AVE AUBURN, CA 95603-2687	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 1160 CIVIC CENTER BLVD. #A YUBA CITY, CA 95993	
OFFICE OF THE CITY ATTORNEY CITY OF LOS ANGELES 240 N. MAIN ST. LOS ANGELES, CA 90012	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KINGS 1400 W. LACEY BLVD. HAWTHORNE, CA 93230	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLUMAS 320 MAIN STREET #404 QUINCY, CA 95971	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TEHAMA P.O. BOX 519 REDBLUFF, CA 96080	
OFFICE OF THE CITY ATTORNEY CITY OF SAN DIEGO CONSUMER & ENVIRONMENTAL PROTECTION 1200 THIRD AVENUE, SUITE 700 SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LAKE 233 N. FORBES ST. # 424 LAKEPORT, CA 95453	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF RIVERSIDE 4075 MAIN ST. RIVERSIDE, CA 92501	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TRINITY P.O. BOX 310 WEAVERVILLE, CA 96093	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALAMEDA 1225 FALLON STREET ROOM 900 OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LASSEN 220 SOUTH LASSEN ST. STE 8 SUSANVILLE, CA 96130	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BENITO 419 4TH ST. HOLLISTER, CA 95023	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TULARE COURTHOUSE #214 VISALIA, CA 93291	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALPINE P.O. BOX 248 MARKLEEVILLE, CA 96120	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LOS ANGELES 18000 CRIMINAL COURTS BUILDING 210 W. TEMPLE ST. LOS ANGELES, CA 90012	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BERNARDINO 316 MT. VIEW AVE. SAN BERNARDINO, CA 92415-0004	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TUOLUMNE 2 S. GREEN ST. SONORA, CA 95370	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMADOR 708 COURT STREET JACKSON, CA 95642	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MADISON 209 W. YOSEMITE AVE. MADERA, CA 93637	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO 310 W. BROADWAY SAN DIEGO, CA 92101	VENTURA COUNTY DISTRICT ATTORNEY'S OFFICE 800 SOUTH VICTORIA AVE VENTURA, CA 93009	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 25 COUNTY CENTER DR. OROVILLE, CA 95963	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIN HALL OF JUSTICE #183 SAN RAFAEL, CA 94903	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN FRANCISCO 850 BRYANT ST #222 SAN FRANCISCO, CA 94103	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YOLO 301 SECOND STREET WOODLAND, CA 95695	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAVERAS GOVERNMENT CENTER 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA 95249	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA P.O. BOX 730 MARIPOSA, CA 95338	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 222 E. WEBER AVE #202 STOCKTON, CA 95202	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 215 5TH ST. MARYSVILLE, CA 95901	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUSA 347 MARKET STREET COLUSA, CA 95932	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MERCED 222 N ST. MERCED, CA 95340	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN MATEO HALL OF JUSTICE AND RECORDS REDWOOD CITY, CA 94063	THOMAS M. RYAN, CEO CVS PHARMACY, INC. ONE CVS DRIVE WOONSOCKET, RI 02895	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CONTRA COSTA P.O. BOX 670 MARTINEZ, CA 94553	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTECALA P.O. BOX 1000 UKIAH, CA 95482	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA BARBARA 1112 SANTA BARBARA ST. SANTA BARBARA, CA 93101	THOMAS M. RYAN, CEO LONGS DRUG STORES, L.L.C. C/O CVS PHARMACY, INC. ONE CVS DRIVE WOONSOCKET, RI 02895	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF DEL NORTE 450 H ST. #171 CRESCENT CITY, CA 95531	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MODOC 204 SOUTH COURT STREET ALTURAS, CA 96101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CLARA 70 W. HEDDING ST. SAN JOSE, CA 95110	JOSEPH FORTUNATO, CEO GENERAL NUTRITION CORPORATION 309 SIXTH AVE PITTSBURGH, PA 15222	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF EL DORADO 515 MAIN ST. PLACERVILLE, CA 95667	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONO P.O. BOX 617 BRIDGEPORT, CA 95317	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CRUZ 701 OCEAN ST. #200 SANTA CRUZ, CA 95060	ALBERT P. POWERS, PRESIDENT NOW HEALTH GROUP, INC. 395 S. GLEN ELLYNN RD BLOOMINGDALE, IL 60108	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF FRESNO 2220 TULARE ST. #1000 FRESNO, CA 93721		OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SHASTA 1325 COURT ST. REDDING, CA 96001	JOSEPH L. VON ROSENBERG III, PRESIDENT OMEGA PROTEIN, INC. 2101 CITY WEST BLVD, BLDG 3, STE 500 HOUSTON, TX 77042	
		OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SIERRA P.O. BOX 457 DOWNSVILLE, CA 95936	SHUN UCHIDA, CEO PHARMATELL LLC 8510 BALBOA BLVD STE 100 NORTHridge, CA 91325	
			CONNIE BARRY, CEO PHARMATELL LLC 8510 BALBOA BLVD STE 100 NORTHridge, CA 91325	
			MARY SAMMONS, CEO RITE AID CORPORATION 30 HUNTER LANE CAMP HILL, PA 17011	

## PRODUCT LIST

### CVS PHARMACY, INC.

NATURE MADE COD LIVER OIL 100 SOFTGELS UPC CODE: 031604 013257; NATURE MADE ODORLESS FISH OIL 1200 MG 60 SOFTGELS UPC CODE: 031604 014162 These product descriptions pertain not only to the specific types of the products listed, but also for all units of all types of similar products made out of fish oils.

### GENERAL NUTRITION CORPORATION

GNC CHOLESTEROL FREE FISH BODY OILS WITH GLA UPC CODE: 048107 073312; GNC LIQUID COD LIVER OIL 16 FL OZ UPC CODE: 049107 057657; GNC CHOLESTEROL FREE FISH BODY OILS WITH GLA 1000 MG 180 SOFTGELS UPC CODE: 048107 073305; GNC LIQUID NORWEGIAN COD LIVER OIL 16 FL OZ UPC CODE: 048107 057657 These product descriptions pertain not only to the specific types of the products listed, but also for all units of all types of similar products made out of fish oils.

### NOW HEALTH GROUP, INC.

DOUBLE STRENGTH COD LIVER OIL 650 MG / 100 SOFTGELS UPC CODE: 733739 017406; NOW FOODS SALMON OIL 100 SOFTGELS UPC CODE: 733739 016706; SHARK LIVER OIL 400 MG 120 SOFTGELS UPC CODE: 733739 003256; NOW FOOD MOLECULARLY DISTILLED OMEGA-3 100 SOFTGELS UPC CODE: 733739 016508 These product descriptions pertain not only to the specific types of the products listed, but also for all units of all types of similar products made out of fish oils.

### OMEGA PROTEIN, INC.

OMEGAPURE OMEGA-3 DIETARY SUPPLEMENT 1000MG 90 CAPSULES These product descriptions pertain not only to the specific types of the products listed, but also for all units of all types of similar products made out of fish oils.

### PHARMAVITE LLC

NATURE MADE COD LIVER OIL 100 SOFTGELS UPC CODE: 031604 013257; NATURE MADE ODORLESS FISH OIL 1200 MG 60 SOFTGELS UPC CODE: 031604 014162; NATURE MADE COD LIVER OIL 100 SOFTGELS UPC CODE: 031604 013257 These product descriptions pertain not only to the specific types of the products listed, but also for all units of all types of similar products made out of fish oils.

### RITE AID CORPORATION

NATURE MADE COD LIVER OIL 100 SOFTGELS UPC CODE: 031604 013257; NATURE MADE ODORLESS FISH OIL 1200MG 60 SOFTGELS UPC CODE: 031604 014162 These product descriptions pertain not only to the specific types of the products listed, but also for all units of all types of similar products made out of fish oils.

### SOLGAR, INC.

SOLGAR 100% PURE NORWEGIAN SHARK LIVER OIL COMPLEX 500 MG 60 SOFTGELS UPC CODE: 033984 025660; SOLGAR NORWEGIAN COD LIVER OIL 100 SOFTGELS UPC CODE: 033984 009400 These product descriptions pertain not only to the specific types of the products listed, but also for all units of all types of similar products made out of fish oils.

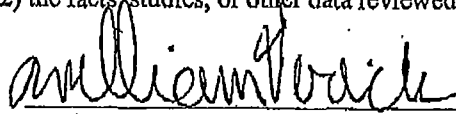
### TWINLAB CORPORATION

TWINLAB EMULSIFIED NORWEGIAN COD LIVER OIL 12 FL OZ UPC CODE: 027434 012102; TWINLAB NORWEGIAN COD LIVER OIL 12 FL OZ UPC CODE: 027434 012249 These product descriptions pertain not only to the specific types of the products listed, but also for all units of all types of similar products made out of fish oils.

**CERTIFICATE OF MERIT**

I, William Verick, hereby declare: 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 and Safety Code section 25249.6 by failing to provide clear and reasonable warnings. I am the attorney for the noticing party. 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 chemical that is the subject of the action. 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. 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 section 25249.7(h)(2), i.e., (1) the identity of the person(s) consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 6, 2009

  
William Verick

---

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliances in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

---

**CERTIFICATE OF SERVICE**

I, Nicole Frank, declare:

If called, I could and would testify as follows: I am over eighteen. My business address is 424 First Street, Eureka, California, 95501. On August 6, 2009, I caused the attached 60-DAY NOTICE LETTER, or a letter identical in substance, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by U.S. Mail I caused the attached 60-DAY NOTICE LETTER and PROPOSITION 65: A SUMMARY to be sent by Certified U.S. Mail to the private business entities also listed on the attached SERVICE LIST. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 6, 2009, at Eureka, California.

  
Nicole Frank

COPY

1 WILLIAM VERICK, CSB #140972  
2 Klamath Environmental Law Center  
3 424 First Street  
4 Eureka, CA 95501  
5 Telephone: (707) 268-8900  
6 Fax: (707) 268-8901  
7 wverick@igc.org  
8 ecorights@earthlink.net

9 DAVID ROE, CSB # 62552  
10 Law Offices of David Roe  
11 1061 Walker Ave  
12 Oakland, CA 94610  
13 Telephone: (510) 465-5860  
14 daavidroe@mail.com

15 Attorneys for Plaintiffs,  
16 CHRIS MANTHEY, BENSON CHILES and MATEEL ENVIRONMENTAL JUSTICE  
17 FOUNDATION

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO  
20 (Unlimited Jurisdiction)

21 CHRIS MANTHEY, BENSON CHILES and  
22 MATEEL ENVIRONMENTAL  
23 JUSTICE FOUNDATION,

24 Plaintiffs,

25 v.

26 CVS PHARMACY, INC.; GENERAL  
27 NUTRITION CORPORATION; NOW HEALTH  
28 GROUP, INC.; OMEGA PROTEIN, INC.;  
PHARMAVITE LLC; RITE AID  
CORPORATION; SOLGAR, INC.; and  
TWINLAB CORPORATION

Defendants,

CHRIS MANTHEY, BENSON CHILES and MATEEL ENVIRONMENTAL JUSTICE

COMPLAINT FOR INJUNCTION  
AND CIVIL PENALTIES

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 02 2010

CLERK OF THE COURT  
BY: DEBORAH STEPPE  
Deputy Clerk

CASE MANAGED BY CONFERENCE SET

JUL 30 2010 9:22 AM

DEPARTMENT 212

CASE NO

CGC-10-497334

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL



1 FOUNDATION allege as follows:

2 INTRODUCTION

3  
4 1. This Complaint seeks civil penalties and an injunction to remedy the continuing  
5 failure of defendants CVS PHARMACY, INC.; GENERAL NUTRITION CORPORATION;  
6 NOW HEALTH GROUP, INC.; OMEGA PROTEIN, INC.; PHARMAVITE LLC; RITE AID  
7 CORPORATION; SOLGAR, INC.; and TWINLAB CORPORATION, (hereinafter  
8 "Defendants"), to give clear and reasonable warnings to those residents of California, who  
9 handle, ingest and use dietary supplements that are, or that are made from, fish oil, fish liver oil,  
10 shark oil or shark liver oil (hereinafter "fish oil supplements"), that ingestion of these products  
11 causes those residents to be exposed to polychlorinated biphenyls (hereinafter, collectively,  
12 "PCBs"). PCBs are known to the State of California to cause cancer and birth defects.  
13  
14 Defendants manufacture, distribute, and/or market fish oil supplements. Defendants' products  
15 cause exposures to PCBs, which are chemicals known to the State of California to cause cancer,  
16 birth defects and other reproductive harm.  
17

18  
19 2. Defendants are businesses that manufacture, market, and/or distribute fish oil  
20 supplements. Defendants intend that residents of California ingest fish oil supplements that  
21 Defendants manufacture, market, and/or distribute. When these products are ingested in their  
22 normally intended manner, they expose people to PCBs. In spite of knowing that residents of  
23 California were and are being exposed to PCBs when they ingest Defendants' fish oil  
24 supplements, Defendants did not and do not provide clear and reasonable warnings that these  
25 products cause exposure to chemicals known to cause cancer, birth defects and other  
26 reproductive harm. The fish oil supplements to which this Complaint pertains are those  
27  
28

1 referenced in the Products List that accompanied the 60 Day Notice Letter, which is appended to  
2 and incorporated by reference in this Complaint.

3  
4 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7  
5 to compel Defendants to bring their business practices into compliance with section 25249.5 et  
6 seq. by providing a clear and reasonable warning to each individual who has been and who in the  
7 future may be exposed to the above mentioned toxic chemicals from the reasonably anticipated  
8 and intended use of Defendants' products.

9  
10 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure  
11 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known  
12 to cause cancer, birth defects and other reproductive harm. Plaintiff also seeks an order that  
13 Defendants identify and locate each individual person who in the past has purchased Defendants'  
14 fish oil supplements and to provide to each such purchaser a clear and reasonable warning that  
15 those fish oil supplements cause exposures to chemicals known to cause cancer and birth defects.  
16  
17  
18

#### 19 PARTIES

20 5. Plaintiffs Christopher Manthey and Benson Chiles are individuals concerned  
21 about human health and environmental protection. Plaintiff MATEEL ENVIRONMENTAL  
22 JUSTICE FOUNDATION ("Mateel") is a non-profit corporation dedicated to, among other  
23 causes, the protection of the environment, promotion of human health, environmental education,  
24 and consumer rights. Mateel is based in Eureka, California, and is incorporated under the laws of  
25 the State of California. All plaintiffs are "persons" pursuant to Health & Safety Code Section  
26 25118. Plaintiffs bring this enforcement action in the public interest pursuant to Health & Safety  
27  
28

1 Code §25249.7(d). Residents of California are regularly exposed to PCBs from fish oil  
2 supplements manufactured, distributed or marketed by Defendants and are intentionally so  
3 exposed without a clear and reasonable Proposition 65 warning.  
4

5 6. Each Defendant is a person doing business within the meaning of Health & Safety  
6 Code Section 25249.11. Each defendant is a business that manufactures, distributes, and/or  
7 markets fish oil supplements in California, including in the City and County of San Francisco.  
8 Manufacture, distribution and/or marketing of these products in the City and County of San  
9 Francisco, and/or to people who live in San Francisco, causes people to be intentionally exposed  
10 to PCBs while they are physically present in the City and County of San Francisco.  
11

12 7. Plaintiffs bring this enforcement action against Defendants pursuant to Health &  
13 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of the  
14 60-day Notice letter, dated August 6, 2009, which Plaintiffs sent to California's Attorney  
15 General. Letters identical in substance were sent to every District Attorney in the state, and to the  
16 City Attorneys of every California city with a population greater than 750,000. On the same  
17 date, Plaintiffs sent an identical 60 Day Notice letter to Defendants. Attached to the 60-Day  
18 Notice Letter sent to the Defendants was a summary of Proposition 65 that was prepared by  
19 California's Office of Environmental Health Hazard Assessment. In addition, the 60-Day Notice  
20 Letter Plaintiffs sent was accompanied by a Certificate of Service attesting to the service of the  
21 60-Day Notice Letter on each entity which received it. Pursuant to California Health & Safety  
22 Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis  
23 for the action was also sent with the 60-Day Notice Letter. Factual information sufficient to  
24 establish the basis of the Certificate of Merit was enclosed with the 60-Day Notice letter  
25  
26  
27  
28

1 Plaintiffs sent to the Attorney General.

2 8. Each Defendant is a business that employs more than ten people.

3  
4 JURISDICTION

5 9. The Court has jurisdiction over this action pursuant to California Health & Safety  
6 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court  
7 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6  
8 of the Health & Safety Code, which contains the statutes under which this action is brought, does  
9 not grant jurisdiction to any other trial court.

10  
11 10. This Court also has jurisdiction over Defendants because they are businesses that  
12 have sufficient minimum contacts in California and within the City and County of San Francisco.  
13 Defendants intentionally availed themselves of the California and San Francisco County markets  
14 for fish oil supplements. It is thus consistent with traditional notions of fair play and substantial  
15 justice for the San Francisco Superior Court to exercise jurisdiction over them.

16  
17 11. Venue is proper in this Court because Defendants market their products in and  
18 around San Francisco and thus intentionally cause people to ingest PCBs while those people are  
19 physically present in San Francisco. Liability for Plaintiffs' causes of action, or some parts  
20 thereof, has accordingly arisen in San Francisco during the times relevant to this Complaint and  
21 Plaintiffs accordingly seek civil penalties and forfeitures imposed by statutes.

22  
23  
24 FIRST CAUSE OF ACTION  
25 (Claim for Injunctive Relief)

26 12. Plaintiff s reallege and incorporate by reference into this First Cause of Action, as  
27 if specifically set forth herein, paragraphs 1 through 11, inclusive.

28 13. The People of the State of California have declared by referendum under

1 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right "[t]o be informed  
2 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

3  
4 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates  
5 that persons who, in the course of doing business, knowingly and intentionally expose any  
6 individual to a chemical known to the State of California to cause cancer or birth defects, must  
7 first provide a clear and reasonable warning to such individual prior to the exposure.

8  
9 15. Since at least August 6, 2006, Defendants have engaged in conduct that violates  
10 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and  
11 intentionally exposing to PCBs, those California residents who ingest fish oil supplements. The  
12 normally intended use of fish oil supplements causes people to ingest PCBs, which are chemicals  
13 known to the State of California to cause cancer, birth defects and other reproductive harm.  
14 Defendants have not provided clear and reasonable warnings within the meaning of Health &  
15 Safety Code Sections 25249.6 and 25249.11.

16  
17 16. At all times relevant to this action, Defendants knew that the fish oil supplements  
18 they manufactured, distributed or marketed were causing exposures to PCBs. Defendants  
19 intended that residents of California ingest fish oil supplements thereby causing significant  
20 exposures to these chemicals.  
21

22 17. By the above described acts, Defendants have violated Cal. Health & Safety Code  
23 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition  
24 65, to provide warnings to all present and future customers, and to provide warnings to their past  
25 customers who purchased Defendants' products without receiving a clear and reasonable  
26 warning.  
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1 D. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to  
2 Plaintiffs the attorneys fees and costs it incurred in bringing this enforcement action.

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4 5. For such other relief as this court deems just and proper.  
5  
6  
7

8 Dated: February 24, 2010

KLAMATH ENVIRONMENTAL LAW CENTER

9  
10 By 

11 William Verick  
12 Attorney for Plaintiffs Christopher Manthey,  
13 Benson Chiles and the Mateel Environmental Justice  
14 Foundation  
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