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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 SOLGAR, INC, NBTY, INC. 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 allege that Defendants manufactured, packaged, distributed, marketed and/or sold dietary

[PROPOSED] CONSENT JUDGMENT AS TO SOLGAR, INC., NBTY, INC., et al.; ORDER - 1

1 supplements made from fish oils, fish liver oils, shark oils, and/or shark liver oils ("Products")
2 for human consumption containing the Proposition 65 listed chemical polychlorinated biphenyls
3 ("PCBs") in an amount that violated the provisions of Health & Safety Code §§ 25249.5 *et seq.*
4 ("Proposition 65") by knowingly and intentionally exposing persons to a chemical known to the
5 State of California to cause reproductive toxicity and cancer, namely PCBs, without first
6 providing a clear and reasonable warning to such individuals. This Consent Judgment resolves
7 Plaintiffs' claims against Solgar, Inc., and NBTY, Inc., including its direct and indirect
8 subsidiaries, expressly including without limitation all Dietary Supplement Products sold under
9 the brand names Nature's Bounty and Good 'N Natural, including those identified in the notice
10 letters listed below in Section 1.2 (collectively, "Settling Defendants"). The Products covered
11 by this Consent Judgment are described in Exhibit A attached hereto (the "Dietary Supplement
12 Products"). If a Plaintiff in the future inquires whether a Product is a Dietary Supplement
13 Product subject to this Consent Judgment, a Settling Defendant shall respond promptly (and in
14 any event within fourteen (14) days of the inquiry) to Plaintiff's inquiry.

15 **1.2** For purposes of this Consent Judgment only, Plaintiffs and Settling Defendants
16 (hereinafter referred to as the "Parties"), stipulate that this Court has jurisdiction over
17 allegations of violations contained in the Complaint and personal jurisdiction over the Settling
18 Defendants as to the acts alleged in the Complaint, that venue is proper in the County of San
19 Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of
20 all claims which could have been raised in the Complaint based on the facts alleged therein.
21 More than sixty (60) days have lapsed since Plaintiff issued a notice of violation of Proposition
22 65 letter dated August 6, 2009, and additional notice of violation of Proposition 65 letters dated
23 August 5, 2011 and February 1, 2012. No public prosecutor has commenced a legal action
24 respecting any of the notice of violation letters or intervened in Plaintiffs' suit. A copy of the
25 notice of violation letters and the Complaint appear at Exhibit B.

26 **1.3** Each Settling Defendant denies the allegations set forth in the Complaint.

27 **1.4** For the purpose of avoiding prolonged and costly litigation, the Parties enter into
28 this Consent Judgment as a full settlement of all claims that were raised in the Complaint based

[PROPOSED] CONSENT JUDGMENT AS TO SOLGAR, INC., NBTY, INC., et al.; ORDER - 2

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

12 **II. MONITORING**

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

27 **2.2** A determinative level of PCBs in any Dietary Supplement Product for purposes
28 of this Consent Judgment shall be established if a Settling Defendant conducts, or has

1 conducted on its behalf, testing of a minimum of three (3) and a maximum of ten (10) samples
2 (at a Settling Defendant's discretion) from different lots or bulks using US EPA Method 8082A.
3 The determinative level shall be the arithmetic mean (average) of the samples so tested. The
4 determinative level shall be the level evaluated to determine compliance with the obligations of
5 this Consent Judgment, including Section 3.1 below. The determinative level for a given
6 Dietary Supplement Product may be established at any time and the Parties expressly
7 contemplate that in the event of a dispute regarding the determinative level, the Settling
8 Defendant shall be afforded an opportunity prior to enforcement of this Consent Judgment to
9 supplement the existing test data and information on hand pursuant to Section 2.1 as set forth in
10 this Section 2.2.

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

22 **III. CLEAR AND REASONABLE WARNINGS**

23 **3.1 Warning Standard**

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

1 reproductive harm, or exceeds the exposure limit for PCBs of 350 nanograms per day for
2 cancer, based on the maximum daily dosage recommended on the Dietary Supplement Product
3 label, unless a warning is placed on the packaging, labeling or directly to or on the Product that
4 states:

5 "[CALIFORNIA PROPOSITION 65] WARNING:

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

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

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1 **3.2 Mail Order Sales**

2 For any mail order sales by a Settling Defendant, the warning language required under
3 this Consent Judgment shall also be included in the mail order catalogue, either on the same
4 page as any order form, or on the same page upon which the Dietary Supplement Product's
5 price is listed, in the same type size as the surrounding, non-heading text. Required warning
6 text, if any, shall be added in the next print run of a catalogue which is scheduled in the ordinary
7 course of business at least forty-five (45) days after entry of this Consent Judgment.

8 **3.3 Internet Sales**

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

20 **3.4 Any non-discretionary changes to the language or format of the warnings**
21 required herein shall be made only after Court approval or obtaining Plaintiffs' and the
22 California Attorney General's approval. If any Settling Defendant requests a non-discretionary
23 change in language or format of the warnings and neither Plaintiffs nor the Attorney General
24 respond to that request within forty-five (45) days, then that Settling Defendant may move the
25 Court via a noticed motion to modify this Consent Agreement. The Parties agree that
26 adjustments to the warning text for accuracy if warning trigger levels for PCBs change due to
27 either Plaintiff or the Office of Environmental Health Hazard Assessment adopting (as set forth
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2013 WBC QM
1 in Section 3.6) final "safe harbor" figures which are higher than 290 ~~ug~~^{ng}/day shall be deemed a
2 discretionary change.

3 3.5 Each Settling Defendant's compliance with Sections 3.1 through 3.4 of this
4 Consent Judgment shall fully and completely satisfy such Settling Defendant's obligations
5 under Proposition 65 with respect to PCBS in the Dietary Supplement Products and,
6 additionally, all sales to California consumers of such Dietary Supplement Products by any
7 person shall be deemed to be in compliance with Proposition 65 with respect to PCBs. For the
8 avoidance of doubt, the Parties expressly agree sales of any Dietary Supplement Products any
9 Settling Defendant already has manufactured, distributed or sold prior to the Compliance Date
10 shall not constitute a violation of this Consent Judgment, even if sales of such Dietary
11 Supplement Products to California consumers occur after the Compliance Date.

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

21 **IV. MONETARY RELIEF**

22 4.1 Within fifteen (15) days after entry of this Consent Judgment, Settling
23 Defendants shall pay Plaintiffs a total of \$137,500 ("Settlement Proceeds"). The Settlement
24 Proceeds shall be made payable to Baron & Budd, P.C. and delivered to Laura Baughman at
25 Baron & Budd, P.C., 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219. Of the Settlement
26 Proceeds, \$3,000 shall be deemed a Civil Penalty. Plaintiffs shall bear all responsibility for
27 apportioning and paying to the State of California any portion of the Settlement Proceeds as
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1 required by California Health & Safety Code § 25249.12(d), and no Settling Defendant shall
2 have any liability if payments to the State of California are not made by Plaintiffs.

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

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

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

19 **VI. MODIFICATION OF SETTLEMENT**

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

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1 **VII. APPLICATION OF CONSENT JUDGMENT**

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

5 7.2 This Consent Judgment shall apply to and be binding upon Plaintiffs and each of
6 the Settling Defendants, their officers, directors, and shareholders, divisions, subdivisions,
7 parent entities or subsidiaries, and successors or assigns of each of them.

8 **VIII. CLAIMS COVERED**

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

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

21 **8.2 Plaintiffs' Release of Settling Defendants**

22 In further consideration of the promises and agreements herein contained, and for the
23 payment to be made pursuant to Section 4.1, Plaintiffs, on behalf of themselves, their past and
24 current agents, representatives, attorneys, successors and/or assignees, and Plaintiffs, in their
25 representative capacity in the interest of the general public, hereby release and waive all rights
26 to institute or participate in, directly or indirectly, any form of legal action addressing any and
27 all claims occurring on or before the entry of this Consent Judgment, and release all claims
28 occurring on or before the entry of this Consent Judgment, including, without limitation, all

1 actions, causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
2 costs, fines, penalties, losses or expenses, including, but not limited to, investigation fees, expert
3 fees and attorneys' fees of any nature whatsoever, whether known or unknown, fixed or
4 contingent against each of the Settling Defendants and each of their suppliers, contract
5 manufacturers, owners, parent companies, corporate affiliates, subsidiaries, distributors,
6 retailers and their respective officers, directors, attorneys, representatives, shareholders, agents,
7 and employees arising under Proposition 65 related to each Settling Defendant's alleged failure
8 to warn about exposures to or identification of PCBs contained in the Dietary Supplement
9 Products.

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

21 In addition, Plaintiffs, on behalf of themselves, their attorneys and agents, release and
22 waive all rights to institute or participate in, directly or indirectly, any form of legal action
23 addressing any and all claims occurring on or before the entry of this Consent Judgment, and
24 release all claims occurring on or before the entry of this Consent Judgment against the Settling
25 Defendants arising under Proposition 65 related to each of the Settling Defendants' alleged
26 failure to warn about exposures to or identification of PCBs contained in the Dietary
27 Supplement Products and for all actions or statements regarding the alleged failures to warn
28 about exposures to or identification of PCBs contained in the Dietary Supplement Products

1 made by each of the Settling Defendants or its attorneys or representatives in the course of
2 responding to those alleged violations of Proposition 65 as alleged in the Complaint. For the
3 avoidance of doubt, Plaintiffs expressly agree that all of the foregoing releases, waivers,
4 agreements and acknowledgments in Sections 8.1 and 8.2, including those made by Plaintiffs in
5 their representative capacity in the interest of the general public, apply to sales of any Dietary
6 Supplement Products any Settling Defendant already has manufactured, distributed or sold prior
7 to the Compliance Date, even if sale or use of such Dietary Supplement Products to California
8 consumers occur after the Compliance Date.

9 Without limiting the foregoing, and for further avoidance of doubt, all of Plaintiffs'
10 foregoing releases, waivers, resolutions and settlements shall apply to Dietary Supplement
11 Products sold by or on behalf of Wal-Mart and its affiliates and subsidiaries.

12 **8.3 Release of Plaintiffs**

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

17 **IX. RETENTION OF JURISDICTION**

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

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

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

23 **XI. ENFORCEMENT**

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

1 **XII. GOVERNING LAW**

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

7 **XIII. EXCHANGE IN COUNTERPARTS**

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

11 **XIV. NOTICES**

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

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

19 Laura J. Baughman, Esq.
20 Baron & Budd, P.C.
21 3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219.

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

24 Judith M. Praitis, Esq.
25 Sidley Austin, LLP
26 555 West Fifth St., Suite 4000
Los Angeles, CA 90013

Christine McInerney, Esq.
Deputy General Counsel Litigation
NBTY, Inc.
2100 Smithtown Avenue
Ronkonkoma, New York 11779

1 **XV. SEVERABILITY**

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

5 **XVI. ENTIRE AGREEMENT**

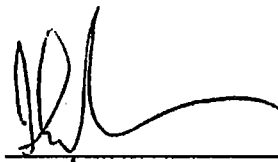
6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any Party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
11 deemed to exist or to bind any of the Parties.

12 **XVII. ASSIGNMENT**

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

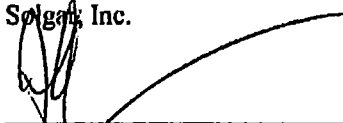
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17 **APPROVED AS TO SUBSTANCE:**

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19 Dated: 9/6/12



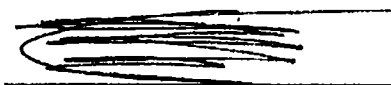
Solgar, Inc.

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21 Dated: 9/6/12



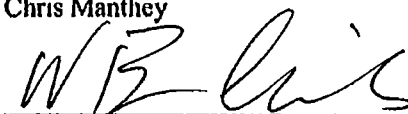
NBTY, Inc., including its direct and indirect
subsidiaries

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24 Dated: 9/7/12



Chris Manthey

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27 Dated: 9/7/12



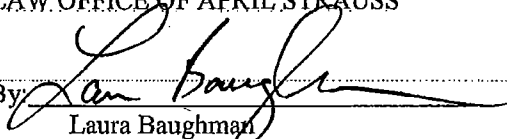
Benson Chiles

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APPROVED AS TO FORM:

Dated: 9/10/12

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

By: 
Laura Baughman
Attorneys for Plaintiffs

Dated: _____

Sidley Austin, LLP

By: _____
Judith M. Praitis
Attorneys for Defendants

APPROVED AND ORDERED:

Dated: _____

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

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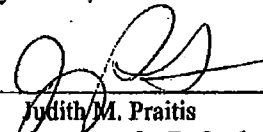
Dated: _____

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

By: _____
**Laura Baughman
Attorneys for Plaintiffs**

Dated: _____

Sidley Austin, LLP

By:  _____
**Judith M. Praitis
Attorneys for Defendants**

APPROVED AND ORDERED:

Dated: _____

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

1 **EXHIBIT A – “DIETARY SUPPLEMENT PRODUCTS”**

2

3 The Dietary Supplement Products shall be all fish oils, fish, shark or cod liver oils, shark or squid

4 oils, krill oil, algae oils and other oils containing eicosapentaenoic acid (“EPA”) and / or

5 docosahexaenoic acid (“DHA”) for human consumption containing the Proposition 65 listed

6 chemical polychlorinated biphenyls (“PCBs”) which are manufactured, distributed or sold by or

 on behalf of a Settling Defendant, whether manufactured, distributed or sold prior to, or

 subsequent to entry of, this Consent Judgment.

7 Dietary Supplement Products include those sold under a brand or trademark owned or licensed

8 for use by a Settling Defendant, and those “private label” products which a Settling Defendant

9 manufactures, distributes or sells to third parties; provided, however, that for products sold to

10 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.

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EXHIBIT B—NOTICE LETTERS AND COMPLAINT



August 6, 2009

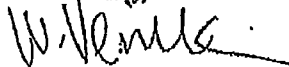
EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 70550
OAKLAND CA 94612-0550

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 Notifying 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,


William Verick

424 First Street, Berkeley, CA 94601 • 707.268.8900 (phone) 707.268.8901 (fax)

SERVICE LIST

<p>HOWARD G. WEIL DEPUTY ATTORNEY GENERAL OFFICE OF THE ATTORNEY GENERAL P.O. BOX 70350 OAKLAND, CA 94614-0350</p> <p>OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND 585 14TH ST 14TH FLOOR OAKLAND, CA 94612</p> <p>OFFICE OF THE CITY ATTORNEY CITY OF SAN FRANCISCO CITY HALL ROOM 126 400 VAN NESS SAN FRANCISCO, CA 94102</p> <p>OFFICE OF THE CITY ATTORNEY CITY OF SACRAMENTO P.O. BOX 1946 SACRAMENTO, CA 95812-1946</p> <p>OFFICE OF THE CITY ATTORNEY CITY OF SAN JOSE 200 EAST SANTA CLARA STREET SAN JOSE, CA 95113</p> <p>OFFICE OF THE CITY ATTORNEY CITY OF LOS ANGELES 260 N. MAIN ST. LOS ANGELES, CA 90012</p> <p>OFFICE OF THE CITY ATTORNEY CITY OF SAN DIEGO CONSUMER & ENVIRONMENTAL PROTECTION 1200 THIRD AVENUE, SUITE 120 SAN DIEGO, CA 92101</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALAMEDA 1215 PALLON STREET ROOM 903 OAKLAND, CA 94612</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALPINE P.O. BOX 248 MARKLESVILLE, CA 95320</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMADOR 708 COURT STREET JACKSON, CA 95612</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 25 COUNTY CENTER DR. OROVILLE, CA 95963</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAVERAS GOVERNMENT CENTER 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA 95329</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUSA 347 MARKET STREET COLUSA, CA 95924</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CONTRA COSTA P.O. BOX 670 MARTINEZ, CA 94553</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF DEL Norte 450 E ST #101 CRESCENT CITY, CA 95531</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF EL DORADO 515 MAIN ST. PLACERVILLE, CA 95667</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF FRESNO 2120 TULARE ST #100 FRESNO, CA 93721</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF GLENN P.O. BOX 410 WILLOWS, CA 95394</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HUMBOLDT 825 3RD ST. EUREKA, CA 95501</p> <p>COUNTY OF IMPERIAL COURTHOUSE, FLOOR 2 919 W. MAIN ST IMPERIAL, CA 92241</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF INYO P.O. DRAWER D INDEPENDENCE, CA 92326</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KERN 1215 TRUCKEE AVE. FLOOR 4 BAKERSFIELD, CA 93301</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KINGS 1400 W. LACBY BLVD. HANFORD, CA 93230</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LAKE 255 N. FORDES ST #414 LAKEFORD, CA 93243</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LASSEN 210 SOUTH LASSEN ST. STE 1 TUSARVILLE, CA 95130</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LOS ANGELES 1000 CRIMINAL COURTS BUILDING 210 W. TEMPLE ST. LOS ANGELES, CA 90012</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MADRA 269 W. YOSEMITE AVE MADERA, CA 95337</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIN HALL OF JUSTICE #10 SAN RAFAEL, CA 94903</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA P.O. BOX 710 MARIPOSA, CA 95338</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MENDOCINO P.O. BOX 1090 UKIAH, CA 95421</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MERCED 232A N. ST. MERCED, CA 95340</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MODOC 204 SOUTH COURT STREET ATLAS, CA 95101</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONO P.O. BOX 617 BROCKPORT, CA 95317</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTAGNY 240 CHURCH STREET P.O. BOX 1131 SALINAS, CA 93501</p> <p>COUNTY OF NAPA 931 PARKWAY MALL P.O. BOX 220 NAPA, CA 94559-0120</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NEVADA 110 UNION STREET NEVADA CITY, CA 95959</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ORANGE 491 CIVIC CENTER DR WEST SANTA ANA, CA 92701</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLACER 11322 B AVE AUBURN, CA 95603-2497</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLUMAS 340 MAIN STREET #404 QUINCY, CA 95971</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF RIVERSIDE 403 MAIN ST. RIVERSIDE, CA 92501</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SACRAMENTO 501 O STREET SACRAMENTO, CA 95814</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BENITO 419 4TH ST. HOLLISTER, CA 95023</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BERNARDINO 316 MT. VIEW AVE. SAN BERNARDINO, CA 92415-0004</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO 210 W. BROADWAY SAN DIEGO, CA 92101</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN FRANCISCO 830 DRAYTON ST SAN FRANCISCO, CA 94103</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 372 N. WEBER AVE #202 STOCKTON, CA 95202</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN LUIS OBISPO COUNTY GOVERNMENT CENTER #400 SAN LUIS OBISPO, CA 93401</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN MATEO HALL OF JUSTICE AND RECORDS REDWOOD CITY, CA 94063</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA BARBARA 1112 SANTA BARBARA ST. SANTA BARBARA, CA 93101</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CLARA 70 W. JUDITH ST. SAN JOSE, CA 95110</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CRUZ 701 OCEAN ST. #200 SANTA CRUZ, CA 95060</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SHASTA 1325 COURT ST. REDDING, CA 96001</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SIERRA P.O. BOX 457 DOWNTOWN, CA 95916</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SISKIYOU P.O. BOX 216 YREKA, CA 96097</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SOLANO 600 UNION AVE FAIRFIELD, CA 94533</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SONOMA 600 ADMINISTRATION DR. #212 SANTA ROSA, CA 95403</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF STANISLAUS 1100 1ST. ST. MODESTO, CA 95354</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SUTTER 1100 CIVIC CENTER BLVD. #A YUBA CITY, CA 95993</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TULARE P.O. BOX 510 REDD BLUFF, CA 95660</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TRENT P.O. BOX 310 WHAVERVILLE, CA 95693</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TULARE COURTHOUSE #24 VISALIA, CA 93291</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TUOLUMNE 25 S. GREEN ST. SONORA, CA 95170</p> <p>VENTURA COUNTY DISTRICT ATTORNEY'S OFFICE 400 SOUTH VICTORIA AVE VENTURA, CA 93003</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YOLO 201 SECOND STREET WOODLAND, CA 95695</p> <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 213 5TH ST. MARYSVILLE, CA 95901</p> <p>THOMAS M RYAN, CEO CVA PHARMACY, INC. ONE CVS DRIVE WOONSOCKET, RI 02895</p> <p>THOMAS M RYAN, CEO LONGS DRUG STORES, L.L.C. C/O CVS PHARMACY, INC. ONE CVS DRIVE WOONSOCKET, RI 02895</p> <p>JOSEPH FORUMATO, CEO GENERAL NUTRITION CORPORATION 300 6TH AVE PITTSBURGH, PA 15222</p> <p>ALBERT P POWERS, PRESIDENT NOW HEALTH GROUP, INC. 335 S OLIVE HILLY RD BLOOMINGDALE, IL 60101</p> <p>JOSEPH L. VON ROSENBERG, III, PRESIDENT OMEGA PROTEIN, INC. 2101 CITY WEST BLVD, BLDG 2, STE 500 HOUSTON, TX 77013</p> <p>SHUN UCHIDA, CEO PHARMATITE LLC 810 BALBOA BLVD STE 100 NORTH RIDGE, CA 91325</p> <p>MARY SAMMONS, CEO RITH AND CORPORATION 30 HUNTER LANE CAMP HILL, PA 17011</p>	<p>KARL RIBDEL, PRESIDENT SOLAR, INC. 2100 SMITH TOWN AVENUE RONKONKOMA, NY 11779</p> <p>WILLIAM W HICKOLSON, CEO TYNLAB CORPORATION 612 BROADWAY 11TH FL NEW YORK, NY 10012</p>
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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.

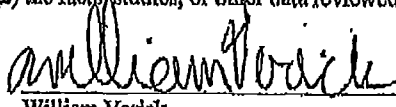
TWINLAB CORPORATION

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

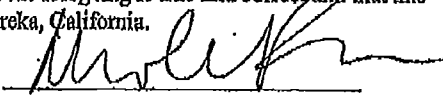

William Verick

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
19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20
21 COUNTY OF SAN FRANCISCO
22 (Unlimited Jurisdiction)

23 CHRIS MANTHEY, BENSON CHILES and
24 MATEEL ENVIRONMENTAL
25 JUSTICE FOUNDATION,

26 Plaintiffs,
27
28 v.

29 CVS PHARMACY, INC.; GENERAL
30 NUTRITION CORPORATION; NOW HEALTH
31 GROUP, INC.; OMEGA PROTEIN, INC.;
32 PHARMAVITE LLC; RITE AID
33 CORPORATION; SOLGAR, INC.; and
34 TWINLAB CORPORATION

35 Defendants,

36
37 CHRIS MANTHEY, BENSON CHILES and MATEEL ENVIRONMENTAL JUSTICE
38

39 COMPLAINT FOR INJUNCTION
40 AND CIVIL PENALTIES

ENDORSED
FILED
San Francisco County Superior Court

MAR 02 2010

CLERK OF THE COURT
BY: DEBORAH STEFFE
Deputy Clerk

CASEMANAGEMENT CONFERENCE SET

JUL 30 2010 9:00 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 Defendants manufacture, distribute, and/or market fish oil supplements. Defendants' products
14 cause exposures to PCBs, which are chemicals known to the State of California to cause cancer,
15 birth defects and other reproductive harm.

16
17
18 2. Defendants are businesses that manufacture, market, and/or distribute fish oil
19 supplements. Defendants intend that residents of California ingest fish oil supplements that
20 Defendants manufacture, market, and/or distribute. When these products are ingested in their
21 normally intended manner, they expose people to PCBs. In spite of knowing that residents of
22 California were and are being exposed to PCBs when they ingest Defendants' fish oil
23 supplements, Defendants did not and do not provide clear and reasonable warnings that these
24 products cause exposure to chemicals known to cause cancer, birth defects and other
25 reproductive harm. The fish oil supplements to which this Complaint pertains are those
26
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 PARTIES

19
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 Bureka, 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
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1 Plaintiffs sent to the Attorney General.

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

3 JURISDICTION

4
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 FIRST CAUSE OF ACTION
23 (Claim for Injunctive Relief)

24
25 12. Plaintiff's reallege and incorporate by reference into this First Cause of Action, as
26 if specifically set forth herein, paragraphs 1 through 11, inclusive.

27
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.
27
28

SECOND CAUSE OF ACTION
(Claim for Civil Penalties)

18. Plaintiff realleges and incorporates by reference into this Second Cause of Action, as if specifically set forth herein, paragraphs 1 through 17, inclusive.

19. By the above described acts, Defendants and each of them are liable, pursuant to Health & Safety Code § 25249.7(b), for a civil penalty of up to \$2,500.00 per day for each exposure of an individual to PCBs without proper warning from the use of Defendants' fish oil supplements.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS, as follows:

A. Pursuant to the First Cause of Action, that Defendants be enjoined, restrained, and ordered to comply with the provisions of Section 25249.6 of the California Health & Safety Code;

B. Pursuant to the Second Cause of Action, that Defendants be assessed a civil penalty in an amount equal to \$2,500.00 per individual knowingly and intentionally exposed per day, in violation of Section 25249.6 of the California Health & Safety Code, to PCBs as the result of Defendants' manufacturing, distributing or marketing of fish oil supplements;


C. That Defendants be ordered to identify and locate each individual who purchased their fish oil supplements and to provide a warning to each such person that the purchased fish oil supplements have exposed, or will expose, that person to chemicals known to cause cancer and birth defects.

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.
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8 Dated: February 24, 2010

KLAMATH ENVIRONMENTAL LAW CENTER

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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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