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Attorneys for Plaintiffs
Chris Manthey and Benson Chiles

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

CHRIS MANTHEY and BENSON CHILES,

Case No.: CGC-10-497334

Plaintiffs,

**[PROPOSED] CONSENT JUDGMENT AS
TO NOW HEALTH GROUP, INC.;
ORDER**

vs.

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

Defendants.

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 Aid Corp., Solgar,

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

14 **1.2** For purposes of this Consent Judgment only, Plaintiffs and Settling Defendant
15 (hereafter referred to as the "Parties") stipulate that this Court has jurisdiction over allegations
16 of violations contained in the Complaint and personal jurisdiction over Settling Defendant as to
17 the acts alleged in the Complaint, that venue is proper in the County of San Francisco, and that
18 this Court has jurisdiction to enter this Consent Judgment as a resolution of all claims which
19 could have been raised in the Complaint based on the facts alleged therein. Settling Defendant
20 employs ten (10) or more employees. More than sixty (60) days have lapsed since Plaintiffs
21 issued a notice of violation of Proposition 65 letter dated August 6, 2009, and no public
22 prosecutor has commenced a legal action or intervened in Plaintiffs' suit. A copy of the notice
23 of violation letter and Complaint appear at Exhibit B.

24 **1.3** Settling Defendant denies the allegations set forth in the Complaint.

25 **1.4** For the purpose of avoiding prolonged and costly litigation, the Parties enter into
26 this Consent Judgment as a full settlement of all claims that were raised in the Complaint based
27

28 ¹ Plaintiffs were joined in their Complaint by a third plaintiff, Mateel Environmental Justice Foundation ("Mateel").
Mateel voluntarily dismissed all of its claims as to all Defendants by request for dismissal filed on August 23, 2011.

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, Settling Defendant does not
3 admit any violation of Proposition 65 or any other law and specifically denies that it has
4 committed any such violations and maintains that all Covered Products that it has sold and
5 distributed in California have been and are in compliance with all laws. Nothing in this Consent
6 Judgment shall be construed as an admission by Settling Defendant of any fact, finding,
7 conclusion, issue of law, or violation of law, nor as an admission that any monitoring, testing, or
8 labeling obligations herein have any applicability except with respect to compliance with
9 Proposition 65 respecting products sold within the State of California to California consumers.
10 However, this Section 1.4 shall not diminish or affect the responsibilities and duties of the
11 Parties under this Consent Judgment.

12 **II. MONITORING**

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

27 **2.2** A determinative level ("Determinative Level") of PCBs in any Covered Product
28 for purposes of this Consent Judgment shall be established if Settling Defendant conducts, or

1 has conducted on its behalf, testing of at least three (3) samples from finished product lots or
2 raw, intermediate, or bulk material using US EPA Method 8082A, US EPA Method 1668 or
3 1668A, or any other laboratory test method routinely employed in the United States, Canada, or
4 European countries to test PCBs levels (or specific PCB congeners). At the Settling
5 Defendant's sole discretion, the Determinative Level shall be the arithmetic or geometric mean
6 (average) of the samples so tested. The Determinative Level shall be the level evaluated to
7 determine compliance with the obligations of this Consent Judgment, including Section 3.1
8 below. The Determinative Level for a given Covered Product may be established at any time
9 and the Parties expressly contemplate that in the event of a dispute regarding the Determinative
10 Level, the Settling Defendant shall be afforded an opportunity prior to enforcement of this
11 Consent Judgment to generate supplemental data ("Supplemental Data") to supplement the
12 existing test data and information on hand pursuant to Section 2.1 as set forth in this Section
13 2.2.
14

15 **2.3** All data generated in compliance with Sections 2.1 and 2.2 herein shall be
16 available to Plaintiffs within thirty (30) days of request therefor by Settling Defendant
17 delivering the information to Laura Baughman at Baron & Budd, P.C., 3102 Oak Lawn Ave.,
18 Suite 1100, Dallas, TX 75219 (lbaughman@baronbudd.com). Plaintiffs shall not request such
19 data more often than once per calendar year, unless good cause is shown to request data more
20 frequently. No test data or other information need be maintained or delivered to Plaintiffs
21 corresponding to the time period a Covered Product carries a warning as provided for in Section
22 3.1. Plaintiffs shall keep all such information and data confidential except as is necessary to
23 contest whether the warning obligation of Section 3.1 below has been violated, and if such data
24 or information is required to be presented to the Court, Plaintiffs shall do so under seal or take
25 alternative measures to preserve the confidentiality of the data or information.
26
27
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1 **III. CLEAR AND REASONABLE WARNINGS**

2 **3.1 Warning Standard**

3 Beginning with the date that is ninety (90) days after the Effective Date (as defined in
4 Section X) of this Consent Judgment (the “Compliance Date”), Settling Defendant shall not
5 manufacture for sale in the State of California, distribute into the State of California, or sell
6 directly to a consumer in the State of California any Covered Product that exceeds an exposure
7 limit for polychlorinated biphenyls (“PCBs”) of 290 nanograms per day for birth defects and
8 reproductive harm, or exceeds the exposure limit for PCBs of 350 nanograms per day for
9 cancer, based on the maximum daily dosage recommended on the Covered Product label, unless
10 a warning is placed on the packaging, labeling or directly to or on the Product that states:

11 “[CALIFORNIA PROPOSITION 65] WARNING:

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

14 (hereinafter, “Product Label Warning”). The text in [brackets] is optional in Settling
15 Defendant’s sole discretion. To ensure accuracy in the warning text, Settling Defendant may
16 omit either the word “cancer” or the phrase “birth defects, or other reproductive harm”
17 depending on whether the level of PCBs in the Covered Product exceed only the warning
18 trigger level for cancer, or exceed only the warning trigger level for birth defects or other
19 reproductive harm, or exceed the warning trigger levels for both cancer and birth defects or
20 other reproductive harm. The Parties acknowledge that the warning trigger levels for PCBs
21 may change over time, and Settling Defendant accordingly may adjust the warning text for
22 purposes of accuracy. Product Label Warnings shall be placed with such conspicuousness as
23 compared with other words, statements, designs and/or devices on the labeling as to render it
24 likely to be read and understood by an ordinary individual under customary conditions of use or
25 purchase. If the warning is displayed on the Covered Product’s container or labeling, the
26 warning shall be at least the same size as the largest of any other health or safety warnings on
27 the Covered Product’s container or labeling, and the word “warning” shall be in all capital
28 letters and in bold print. If printed on the labeling, the warning shall be contained in the same

1 section of the labeling that states other safety warnings concerning the use of the Covered
2 Product. Settling Defendant may affix a sticker or a hang tag on each unit of a Covered Product
3 packaged in final form for consumer purchase to deliver the warning, if required, provided the
4 sticker is affixed in a location a consumer is likely to see prior to first use.

5 **3.2 Mail Order Sales**

6 For any mail order sales by Settling Defendant of Covered Products subject to the
7 warning requirements of Section 3.1, the warning language required under this Consent
8 Judgment shall also be included in the mail order catalogue, either on the same page as any
9 order form, or on the same page upon which the Covered Product's price is listed, in the same
10 type size as the surrounding, non-heading text. Required warning text, if any, shall be added in
11 the next print run of a catalogue which is scheduled in the ordinary course of business at least
12 forty-five (45) days after entry of this Consent Judgment.

13 **3.3 Internet Sales**

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

25 **3.4** Any non-discretionary changes to the language or format of the warnings
26 required herein shall be made only after Court approval or obtaining Plaintiffs' and the
27 California Attorney General's approval. If Settling Defendant requests a non-discretionary
28 change in language or format of the warnings and neither Plaintiffs nor the Attorney General

1 responds to that request within forty-five (45) days, then Settling Defendant may move the
2 Court via a noticed motion to modify this Consent Judgment. The Parties agree that, if warning
3 trigger levels for PCBs change due to either Plaintiffs or the California Office of Environmental
4 Health Hazard Assessment ("OEHHA") adopting (as set forth in Section 3.6) final "safe harbor"
5 figures which are higher than 290 nanograms per day, then adjustments to the warning text for
6 accuracy shall be deemed a discretionary change.

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

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

24 **IV. MONETARY RELIEF**

25 **4.1** Settling Defendant shall pay Plaintiffs a total of \$50,000.00 ("Settlement
26 Proceeds") within sixty (60) days of the Effective Date. The Settlement Proceeds shall be made
27 payable to Baron & Budd, P.C. and delivered to Laura Baughman at Baron & Budd, P.C., 3102
28 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219. Of the Settlement Proceeds, \$3,000.00 shall

1 be deemed a Civil Penalty. Plaintiffs shall bear all responsibility for apportioning and paying to
2 the State of California any portion of the Settlement Proceeds as required by California Health
3 & Safety Code § 25249.12(d), and Settling Defendant shall have no liability if payments to the
4 State of California are not made by Plaintiffs.

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

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

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

21 **VI. MODIFICATION OF CONSENT JUDGMENT**

22 This Consent Judgment may be modified by: (1) written agreement among the Parties
23 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of Plaintiffs
24 or Settling Defendant as provided by law and upon entry of a modified Consent Judgment by
25 the Court thereon. All Parties and the California Attorney General's Office shall be served with
26 notice of any proposed modification to this Consent Judgment at least fifteen (15) days in
27 advance of its consideration by the Court.
28

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 Settling
6 Defendant, its officers, directors, and shareholders, divisions, subdivisions, parent entities or
7 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
11 Settling Defendant, of any violation of Proposition 65 or any other statutory or common law
12 claim that could have been asserted against Settling Defendant for failure to provide clear,
13 reasonable and lawful warnings of exposures to PCBs that result from ingestion of the Covered
14 Products. No claim is reserved as between the Parties hereto, and Plaintiffs in their individual
15 capacities and Settling Defendant expressly waive any and all rights which they may have under
16 Section 1542 of the Civil Code of the State of California, which provides:

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

20 **8.2 Plaintiffs' Release of Settling Defendant**

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

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

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

19 In addition, Plaintiffs, on behalf of themselves, their attorneys and agents, release and
20 waive all rights to institute or participate in, directly or indirectly, any form of legal action
21 addressing any and all claims occurring on or before the entry of this Consent Judgment, and
22 release all claims occurring on or before the entry of this Consent Judgment against Settling
23 Defendant arising under Proposition 65 related to Settling Defendant's alleged failure to warn
24 about exposures to or identification of PCBs contained in the Covered Products and for all
25 actions or statements regarding the alleged failures to warn about exposures to or identification
26 of PCBs contained in the Covered Products made by Settling Defendant or its attorneys or
27 representatives in the course of responding to those alleged violations of Proposition 65 as
28 alleged in the Complaint. For the avoidance of doubt, Plaintiffs expressly agree that all of the

1 foregoing releases, waivers, agreements and acknowledgments in Sections 8.1 and 8.2,
2 including those made by Plaintiffs in their representative capacity in the interest of the general
3 public, apply to sales of any Covered Products that Settling Defendant already has
4 manufactured, distributed or sold prior to the Compliance Date, even if sale to, or use by,
5 California consumers of such Covered Products occurs after the Compliance Date.

6 **8.3 Release of Plaintiffs**

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

11 **IX. RETENTION OF JURISDICTION**

12 Pursuant to CCP § 664.6, this Court shall retain jurisdiction of this matter to implement
13 this Consent Judgment.

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

15 Settling Defendant has previously submitted an Offer of Judgment under section 998 of
16 the California Code of Civil Procedure, and Plaintiffs have accepted that Offer of Judgment.
17 This Consent Judgment shall become effective on the date entered by the Court (the “Effective
18 Date”), and its entry by the Court shall supersede the previously accepted Offer of Judgment,
19 which shall then be of no force or effect. If this Consent Judgment is not approved by this
20 Court, it shall be of no force or effect and cannot be used in any proceeding for any purpose,
21 and the previously accepted Offer of Judgment between Settling Defendant and Plaintiffs shall
22 continue in force.

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 Covered Products specifically, then Settling Defendant
5 shall have no further obligations pursuant to this Consent Judgment with respect to those
6 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 Settling Defendant
15 by the other at the addresses set forth below. Either Plaintiffs or Settling Defendant may specify
16 in writing to the other Parties a change of address to which all notices and other
17 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
22 Dallas, TX 75219

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

24 Trenton H. Norris, Esq.
25 Arnold & Porter LLP
26 3 Embarcadero Center, 7th Floor
27 San Francisco, CA 94111

24 Beverly Reid, Esq.
25 General Counsel
26 NOW Health Group, Inc.
27 395 S. Glen Ellyn Road
28 Bloomington, IL 60108

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**

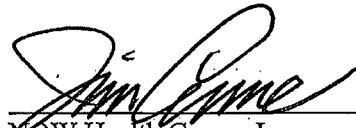
6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, and understandings related hereto. No representations, oral or
9 otherwise, express or implied, 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 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.

16
17 **APPROVED AND AGREED TO:**

18
19 Dated: 7 DECEMBER 2012



NOW Health Group, Inc.
Jim Emme
Chief Operations Officer

20
21
22
23 Dated: _____

Chris Manthey

24
25
26 Dated: _____

Benson Chiles

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 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.

16
17 **APPROVED AND AGREED TO:**

18
19 Dated: _____

NOW Health Group, Inc.
Jim Emme
Chief Operations Officer

20
21
22
23 Dated: 12/6/12

Chris Manthey

24
25
26 Dated: 12/7/12

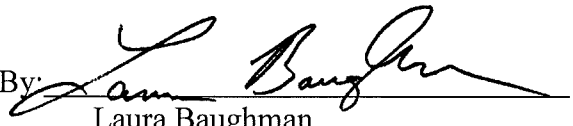
Benson Chiles

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2 **APPROVED AS TO FORM:**

3 Dated: 12/10/12
4

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

5
6 By: 
7 Laura Baughman
8 Attorneys for Plaintiffs

9
10 Dated: _____

ARNOLD & PORTER LLP

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12 By: _____
13 Trenton H. Norris
14 Attorneys for Settling Defendant

15
16 **APPROVED AND ORDERED:**

17
18 Dated: _____

19 _____
20 Honorable Richard A. Kramer
21 Judge of the Superior Court
22 Department 304
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1 **APPROVED AS TO FORM:**

2
3 Dated: _____

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

4
5 By: _____

6 Laura Baughman
7 Attorneys for Plaintiffs

8
9 Dated: 12/6/12

ARNOLD & PORTER LLP

10 By: Trenton H. Norris

11 Trenton H. Norris
12 Attorneys for Settling Defendant

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14
15 **APPROVED AND ORDERED:**

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17 Dated: _____

18 _____
19 Honorable Richard A. Kramer
20 Judge of the Superior Court
21 Department 304

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EXHIBIT A – “COVERED PRODUCTS”

The Covered Products shall be all fish oils, fish, shark or cod liver oils, shark or squid oils, krill oil, algae oils and other marine 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, distributed or sold by or on behalf of Settling Defendant, whether manufactured, distributed or sold prior to, or subsequent to entry of, this Consent Judgment, and regardless of form and regulatory category.

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

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EXHIBIT B—NOTICE LETTER and COMPLAINT



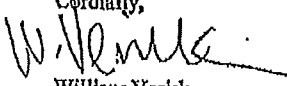
August 6, 2009

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, 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 OLBURN P.O. BOX 430 WILLOUGH, CA 95918	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTBANY 240 CHURCH STREET P.O. BOX 1131 SALINAS, CA 93901	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SISKIYOU P.O. BOX 916 YREKA, CA 96097	KARL RUDOL FRESTHENT SOLAR, INC. 2100 SMITH TOWN AVENUE ROCKY HILL, CT 06112
OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND 305 14TH ST 12TH FLOOR OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HUMBOLDT 123 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 650 UNION AVE FAIRFIELD, CA 94533	WILLIAM W. NICHOLSON, CEO TYNLAN CORPORATION 632 BROADWAY 11TH FL. NEW YORK, NY 10012
OFFICE OF THE CITY ATTORNEY CITY OF SAN FRANCISCO CITY HALL ROOM 1245 400 VAN NESS SAN FRANCISCO, CA 94102	COUNTY OF IMPERIAL COURTHOUSE FLOOR 2 916 W. MAIN ST EL CENTRO, CA 92241	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. #212 SANTA ROSA, CA 95403	
OFFICE OF THE CITY ATTORNEY CITY OF SACRAMENTO P.O. BOX 1946 SACRAMENTO, CA 95812-1946	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF INYO P.O. DRAWER D INDIO, CA 92201	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 1ST ST. #104 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 11561 H AVE AUBURN, CA 95603-2697	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SUTTER 1160 CIVIC CENTER BLVD. #A YUBA CITY, CA 95993	
OFFICE OF THE CITY ATTORNEY CITY OF LOS ANGELES 260 N. MAIN ST. LOS ANGELES, CA 90012	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KINGS 1400 W. LACHY BLVD. HAWTHORNE, CA 93230	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLUMAS 310 MAIN STREET #404 QUINCY, CA 95717	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TEHAMA P.O. BOX 519 RED BLUFF, CA 96080	
OFFICE OF THE CITY ATTORNEY CITY OF SAN DIEGO 1200 THIRD AVENUE, SUITE 700 SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LAKE 253 N. FORBES ST. # 421 LANHOP, CA 94553	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF RIVERSIDE 4075 MAIN ST. RIVERSIDE, CA 92501	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TARRANT P.O. BOX 310 WILKESVILLE, CA 95693	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALAMEDA 1215 FALLON STREET ROOM 200 OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LASSEN 210 SOUTH LASSON ST. 6TH SUSANVILLE, CA 96130	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BENITO 419 1TH ST HOLLISTER, CA 95023	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TULARE COURTHOUSE 424 VISALIA, CA 93291	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALPINE P.O. BOX 248 MARKLEBEVILLE, CA 94120	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LOS ANGELES 1000 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 YUBA 213 5TH ST. MARYSVILLE, CA 95901	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMADOR 708 COURT STREET JACKSON, CA 95612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MADERA 210 W. VOSHENITE AVE. MADERA, CA 93557	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO 310 W. BROADWAY SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YOLO 301 SECOND STREET WOODLAND, CA 95695	
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 #141 SAN RAFAEL, CA 94903	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN FRANCISCO 850 DRYART ST #122 SAN FRANCISCO, CA 94103	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 213 5TH ST. MARYSVILLE, CA 95901	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAVERAS GOVERNMENT CENTER 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA 95329	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARICOPA P.O. BOX 710 MARICOPA, CA 91331	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 272 E. WEBER AVE #202 STOCKTON, CA 95202	THOMAS M. RYAN, CEO CVS PHARMACY, INC. ONE CVS DRIVE WOONSOCKET, RI 02895	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUSA 147 MARKET STREET COLUSA, CA 95932	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA P.O. BOX 1000 MARIPOSA, CA 95331	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN MATEO HALL OF JUSTICE AND RECORDS REDWOOD CITY, CA 94063	THOMAS M. RYAN, CEO LONOS DRUG STORES, L.L.C. C/O CVS PHARMACY, INC. ONE CVS DRIVE WOONSOCKET, RI 02895	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CONTRA COSTA P.O. BOX 610 MARTINEZ, CA 94533	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MENDOCINO P.O. BOX 1000 UKIAH, CA 95472	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA BARBARA 1112 SANTA BARBARA ST. SANTA BARBARA, CA 93101	JOSEPH F. FORTUNATO, CEO GENERAL NUTRITION CORPORATION 303 SIXTH AVE PITTSBURGH, PA 15222	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF DEL Norte 430 1ST #111 CRESCENT CITY, CA 95531	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MERCED 2122 N ST. MERCED, CA 95340	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CLARA 70 W. HEDDING ST. SAN JOSE, CA 95110	ALBERT P. POWERS, PRESIDENT MOW JERATH GROUP, INC. 3958 GLEN HILLY RD BROOKHOLM, IL 60618	
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 BANDERPORT, CA 93517	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CRUZ 701 OCEAN ST. #200 SANTA CRUZ, CA 95060	JOSEPH L. VON ROSENBERG, CEO PRESIDENT OMEGA PROTEIN, INC. 2101 CITY WEST BLVD, BLDG 3, STE 500 HOUSTON, TX 77041	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF FRISNO 2120 TULARE ST #100 FRISNO, CA 93721	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONO P.O. BOX 617 BANDERPORT, CA 93517	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SIERRA P.O. BOX 437 DOWNSVILLE, CA 95826	SHINUCHIDA, CEO PHARMATECH LLC 810 BALBOA BLVD STE 100 NORTHridge, CA 91325	
			CONNOR BARRY, CEO PHARMATECH LLC 810 BALBOA BLVD STE 100 NORTHridge, CA 91325	
			MARY SAMMONS, CEO RITH AND 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.

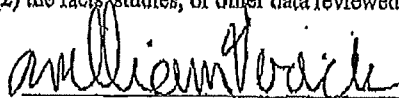
TWINLAB CORPORATION

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

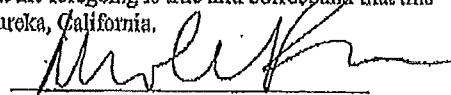

William Verick

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

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 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
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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
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 FIRST CAUSE OF ACTION
24 (Claim for Injunctive Relief)

25
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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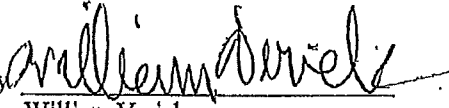
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1 D. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to
2 Plaintiffs the attorneys fees and costs it incurred in bringing this enforcement action.

3
4 5. For such other relief as this court deems just and proper.
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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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