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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.

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.

**[PROPOSED] CONSENT JUDGMENT AS
TO PHARMAVITE LLC, CVS
PHARMACY, INC., THRIFTY PAYLESS,
INC. (ERRONEOUSLY SUED AS RITE
AID CORPORATION); ORDER**

28 **I. INTRODUCTION**

29 **1.1** On March 2, 2010, Chris Manthey and Benson Chiles (collectively, "Plaintiffs"),
30 acting in the public interest, filed a complaint for civil penalties and injunctive relief in San
31 Francisco Superior Court, Case No. 497334 ("Complaint") against CVS Pharmacy, Inc.,
32 General Nutrition Corp., NOW Health Group, Inc., Omega Protein, Inc., Pharmavite LLC, Rite
33 Aid Corp., Solgar, Inc., and Twinlab Corp. (collectively, "Defendants"). In their Complaint,
34 Plaintiffs allege that Defendants manufactured, packaged, distributed, marketed and/or sold

**[PROPOSED] CONSENT JUDGMENT AS TO PHARMAVITE LLC, CVS PHARMACY, INC., THRIFTY
PAYLESS, INC. (ERRONEOUSLY SUED AS RITE AID CORPORATION); ORDER - 1**

1 dietary supplements made from fish oils, fish liver oils, shark oils, and/or shark liver oils
2 (“Products”) for human consumption containing the Proposition 65-listed chemical
3 polychlorinated biphenyls (“PCBs”) in an amount that violated the provisions of Health &
4 Safety Code §§ 25249.5 *et seq.* (“Proposition 65”) by knowingly and intentionally exposing
5 persons to a chemical known to the State of California to cause reproductive toxicity and
6 cancer, namely PCBs, without first providing a clear and reasonable warning to such
7 individuals. This Consent Judgment resolves Plaintiffs’ claims against Pharmavite LLC, CVS
8 Pharmacy Inc., and Thrifty Payless, Inc. (sued erroneously as “Rite Aid Corporation”),
9 including their parent companies, corporate affiliates and direct and indirect subsidiaries
10 (collectively, “Settling Defendants”). This Consent Judgment resolves Plaintiffs’ claims against
11 Settling Defendants expressly including without limitation all Dietary Supplement Products (as
12 defined below), including those identified in the notice letters listed below in Section 1.2. The
13 Products covered by this Consent Judgment (the “Dietary Supplement Products”) are defined in
14 Exhibit A attached hereto.

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

1 **1.3** Each Settling Defendant denies the allegations set forth in the Complaint and in
2 the notice of alleged violation letters.

3 **1.4** For the purpose of avoiding prolonged and costly litigation, the Parties enter into
4 this Consent Judgment as a full settlement of all claims that were raised in the Complaint based
5 on the facts alleged therein, or which could have been raised in the Complaint arising out of the
6 facts alleged therein. By execution of this Consent Judgment, no Settling Defendant admits
7 any violation of Proposition 65 or any other law, specifically denies that it has committed any
8 such violations, and maintains that all dietary supplement products (including without limitation
9 the Dietary Supplement Products) that it has manufactured, sold and distributed in California
10 have been at all relevant times, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission by any Settling Defendant of any fact, finding,
12 conclusion, issue of law, or violation of law, nor as an admission that any monitoring, testing, or
13 labeling obligations herein have any applicability except with respect to compliance with
14 Proposition 65 respecting those Dietary Supplement Products sold within the State of California
15 or sold to California consumers. However, this paragraph shall not diminish or affect the
16 responsibilities and duties of the Parties under this Consent Judgment.

17 **II. MONITORING**

18 **2.1** Commencing with the Compliance Date (as defined in Section 3.1), Settling
19 Defendant Pharmavite shall monitor PCBs levels to which California consumers are exposed in
20 that Settling Defendant's Dietary Supplement Products. In monitoring such levels to establish
21 PCBs levels in Settling Defendant Pharmavite's Dietary Supplement Products, Settling
22 Defendant Pharmavite shall be entitled: (a) to conduct, or to have conducted on its behalf,
23 laboratory testing for PCBs; (b) to rely on the test results its raw, intermediate or bulk material
24 suppliers provide; (c) to rely on test results their contract manufacturers provide; or (d) rely on
25 additional relevant information (such as whether oils have been subject to molecular distillation
26 or other processing to reduce impurities). The laboratory testing for purposes of this Section 2.1
27 may be conducted pursuant to US EPA Method 8082A, US EPA Method 1668 or 1668A, or any
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1 other laboratory test method routinely employed in the United States, Canada, or European
2 countries to document PCBs levels (or specific PCB congeners) in Products. The data and
3 information on which Settling Defendant Pharmavite relies to establish PCBs levels for
4 purposes of this Consent Judgment in a given lot, batch, or other quantity of one or more
5 Dietary Supplement Product(s) shall be maintained for at least two (2) years after such Dietary
6 Supplement Product(s) is manufactured, distributed or sold (whichever is the latest date) by
7 Settling Defendant Pharmavite.

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

23 **2.3** Except for Supplemental Data, all data generated in compliance with Sections
24 2.1 and 2.2 herein shall be available to Plaintiffs within thirty (30) days of request therefor by
25 Settling Defendant’s delivering the information to Laura Baughman at Baron & Budd, P.C.,
26 3102 Oak Lawn Ave., Suite 1100, Dallas, TX 75219 (lbaughman@baronbudd.com). Plaintiffs
27 shall not request such data more often than once per calendar year, unless good cause is shown
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1 to request data more frequently. No test data or other information need be maintained or
2 delivered to Plaintiff corresponding to the time period a Dietary Supplement Product carries a
3 warning as provided for in Section 3.1. Plaintiffs shall keep all such information and data
4 confidential except as is necessary to contest whether the warning obligation of Section 3.1
5 below has been violated, and if such data or information is required to be presented to the Court,
6 Plaintiff shall do so under seal or take alternative measures to preserve the confidentiality of the
7 data or information. The provisions of this Paragraph 2.3 regarding Plaintiffs' inspection of
8 data shall sunset and have no further effect five years from the date this Consent Judgment is
9 entered by the Court.

10 **III. CLEAR AND REASONABLE WARNINGS**

11 **3.1 Warning Standard**

12 Beginning with the date that is ninety (90) days after the Effective Date of this Consent
13 Judgment (the "Compliance Date"), each Settling Defendant shall not manufacture for sale in
14 the State of California, distribute (as to Dietary Supplement Products manufactured after the
15 Compliance Date) into the State of California, or sell (as to Dietary Supplement Products
16 manufactured after the Compliance Date) directly to a consumer in the State of California, any
17 Dietary Supplement Product that exceeds an exposure level ("warning trigger level") for
18 polychlorinated biphenyls ("PCBs") of 290 nanograms per day (for birth defects and
19 reproductive harm), or exceeds the exposure level for PCBs of 350 nanograms per day (for
20 cancer), based on the maximum daily dosage recommended on the Dietary Supplement Product
21 label, unless a warning is placed on the packaging, labeling, or directly to or on such Product,
22 that states:

23 "[CALIFORNIA PROPOSITION 65] WARNING:

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

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

19 **3.2 Mail Order Sales**

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

26 **3.3 Internet Sales**

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

12 **3.4** Any change, other than a change within the Settling Defendants' discretion, by a
13 Settling Defendant to the language or format of the warnings required herein shall be made only
14 after Court approval or obtaining the approval of the California Attorney General and at least
15 one of the Plaintiffs. If any Settling Defendant proposes a change, other than a change within
16 the Settling Defendants' discretion, to the language or format of the warnings and (a) the
17 Attorney General or at least one of the Plaintiffs objects, or (b) neither Plaintiffs nor the
18 Attorney General responds within forty-five (45) days, then that Settling Defendant may move
19 the Court via a noticed motion to modify this Consent Agreement. The Parties agree that a
20 change to the warning text shall be deemed to be within a Settling Defendant's sole discretion if
21 the change corresponds to an alternative warning trigger level for PCBs that differs from a
22 warning trigger level set forth in this Consent Judgment and if either (a) the alternative warning
23 trigger level has been accepted by, agreed to by, or adopted in a judicial proceeding involving,
24 the Attorney General or at least one of the Plaintiffs or (b) the alternative warning trigger level
25 is derived from an NSRL above 350 nanograms of PCBs per day or a MADL above 290
26 nanograms of PCBs per day adopted by the California Office of Environmental Health Hazard
27 Assessment (as set forth in Section 3.6).

1 **3.5** Each Settling Defendant's compliance with Sections 3.1 through 3.4 of this
2 Consent Judgment shall fully and completely satisfy such Settling Defendant's obligations
3 under Proposition 65 with respect to PCBs in the Dietary Supplement Products and,
4 additionally, all sales to California consumers of such Dietary Supplement Products by any
5 person shall be deemed to be in compliance with Proposition 65 with respect to PCBs. For the
6 avoidance of doubt, the Parties expressly agree sales of any Dietary Supplement Products any
7 Settling Defendant already has manufactured, distributed, or sold prior to the Compliance Date
8 shall not constitute a violation of this Consent Judgment, even if sales of such Dietary
9 Supplement Products to California consumers occur after the Compliance Date.

10 **3.6** In the event that either a) at least one of the Plaintiffs subsequently agrees, in a
11 settlement or judicially-entered injunction or consent judgment involving Proposition 65, to a
12 less stringent standard for PCBs in Products than set forth in Paragraph 3.1 above, or b) the
13 California Office of Environmental Health Hazard Assessment ("OEHHA") subsequently
14 establishes a NSRL or MADL for PCBs in Products (including the Dietary Supplement
15 Products) that is higher than the warning trigger level set forth in Paragraph 3.1 above, Settling
16 Defendants shall automatically, with no further action needed on Settling Defendants' part, be
17 entitled to adopt such higher warning trigger level with respect to its compliance obligations
18 under Section 3.1 and with respect to sales to California consumers of the Dietary Supplement
19 Products by Settling Defendants or any other person.

20 **IV. MONETARY RELIEF**

21 **4.1** Within fifteen (15) days after entry of this Consent Judgment, Settling Defendant
22 Pharmavite shall pay Plaintiffs a total of \$115,000 ("Settlement Proceeds"). The Settlement
23 Proceeds shall be made payable to Baron & Budd, P.C. and delivered to Laura Baughman at
24 Baron & Budd, P.C., 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219. Of the Settlement
25 Proceeds, \$3,000 shall be deemed a Civil Penalty. Plaintiffs shall bear all responsibility for
26 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 by Settling Defendant Pharmavite pursuant to Section 4.1
4 shall be the only monetary obligation of the Settling Defendants with respect to this Consent
5 Judgment, including as to any fees, costs, or expenses Plaintiffs have incurred in relation to this
6 action and Plaintiffs hereby jointly and severally expressly release claims, if any, for any
7 additional sums from Settling Defendants.

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

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

20 **VI. MODIFICATION OF SETTLEMENT**

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

27 **VII. APPLICATION OF CONSENT JUDGMENT**

1 7.1 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party that he or she represents to enter into and execute the Consent Judgment
3 on behalf of the Party represented and to legally bind that Party.

4 7.2 This Consent Judgment shall apply to and be binding upon Plaintiffs and each of
5 the Settling Defendants, their officers, directors, and shareholders, divisions, subdivisions,
6 parent entities or subsidiaries, and successors or assigns of each of them.

7 **VIII. CLAIMS COVERED**

8 8.1 This Consent Judgment is a final and binding resolution between Plaintiffs,
9 including Plaintiffs in their representative capacity in the interest of the general public on the
10 one hand, and the Settling Defendants on the other hand, of any violation of Proposition 65 or
11 any other statutory or common law claim that could have been asserted against the Settling
12 Defendants for failure to provide clear, reasonable and lawful warnings of exposures to PCBs
13 that result from ingestion of any of the Dietary Supplement Products. No claim is reserved as
14 between the Parties hereto, and Plaintiffs in their individual capacities and Settling Defendants
15 expressly waive any and all rights which they may have under the provisions of Section 1542 of
16 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.

19 8.2 **Plaintiffs' Release of Settling Defendants**

20 In further consideration of the promises and agreements herein contained, and for the
21 payment to be made pursuant to Section 4.1, Plaintiffs, on behalf of themselves, their past and
22 current agents, representatives, attorneys, successors and/or assignees, and Plaintiffs, in their
23 representative capacity in the interest of the general public, hereby release and waive all rights
24 to institute or participate in, directly or indirectly, any form of legal action addressing any and
25 all claims occurring on or before the entry of this Consent Judgment, and release all claims
26 occurring on or before the entry of this Consent Judgment, including, without limitation, all
27 actions, causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
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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 each of the Settling Defendants and each of their suppliers, contract
4 manufacturers, owners, parent companies, corporate affiliates, subsidiaries, distributors,
5 retailers and their respective officers, directors, attorneys, representatives, shareholders, agents,
6 and employees arising under Proposition 65 related to each Settling Defendant's alleged failure
7 to warn about exposures to or identification of PCBs contained in the Dietary Supplement
8 Products.

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

20 In addition, Plaintiffs, on behalf of themselves, their attorneys and agents, release and
21 waive all rights to institute or participate in, directly or indirectly, any form of legal action
22 addressing any and all claims occurring on or before the entry of this Consent Judgment, and
23 release all claims occurring on or before the entry of this Consent Judgment against the Settling
24 Defendants arising under Proposition 65 related to each of the Settling Defendants' alleged
25 failure to warn about exposures to or identification of PCBs contained in the Dietary
26 Supplement Products and for all actions or statements regarding the alleged failures to warn
27 about exposures to or identification of PCBs contained in the Dietary Supplement Products
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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 Stores 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 Pursuant to CCP § 664.6, this Court shall retain jurisdiction of this matter to implement
19 this Consent Judgment.

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

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

24 **XI. ENFORCEMENT**

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

3 **XII. GOVERNING LAW**

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

9 **XIII. EXCHANGE IN COUNTERPARTS**

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

13 **XIV. NOTICES**

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

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

21 Laura J. Baughman, Esq.
22 Baron & Budd, P.C.
23 3102 Oak Lawn Avenue, Suite 1100
24 Dallas, TX 75219.

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

27 Steven R. Tekosky, Esq.
28 Tatro Tekosky Sadwick LLP
333 South Grand 44270
Los Angeles, CA 90071

1
2 **XV. SEVERABILITY**

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

6 **XVI. ENTIRE AGREEMENT**

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

13 **XVII. ASSIGNMENT**

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

17 **APPROVED AS TO SUBSTANCE:**

18
19 Dated: 12/10/2012

A. Beedley-Beal
Pharmavite LLC, including its direct and
indirect subsidiaries

22 Dated: _____

CVS Pharmacy, Inc., including its direct and
indirect subsidiaries

25 Dated: _____

Rite Aid Corporation, including its direct and
indirect subsidiaries

1
2 **XV. SEVERABILITY**

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17 **APPROVED AS TO SUBSTANCE:**

18
19 Dated: _____

Pharmavite LLC, including its direct and
indirect subsidiaries

20
21
22 Dated: Dec 7, 2012



CVS Pharmacy, Inc., including its direct and
indirect subsidiaries

23
24
25 Dated: _____

Rite Aid Corporation, including its direct and
indirect subsidiaries

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16 on Plaintiffs and the Attorney General of the State of California.

17 **APPROVED AS TO SUBSTANCE:**

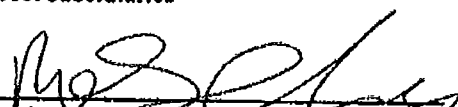
18
19 Dated: _____

20 _____
21 Pharmavite LLC, including its direct and
indirect subsidiaries

22 Dated: _____

23 _____
24 CVS Pharmacy, Inc., including its direct and
indirect subsidiaries

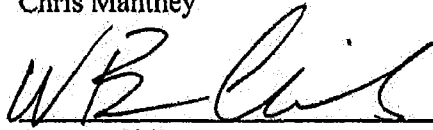
25 Dated: 12-07-12

26 
27 Rite Aid Corporation, including its direct and
28 indirect subsidiaries

1 Dated: 12/6/12


Chris Manthey

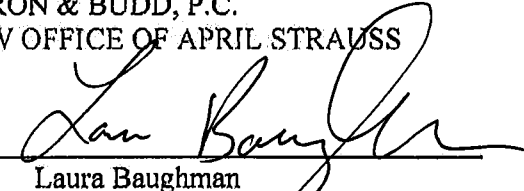
2
3
4 Dated: 12/7/12


Benson Chiles

5 APPROVED AS TO FORM:

6
7 Dated: 12/7/12

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

8
9
10 By: 
Laura Baughman
Attorneys for Plaintiffs

11
12
13 Dated: _____

Tatro Tekosky Sadwick LLP

14
15 By: _____
Steven R. Tekosky
Attorneys for Defendants

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22 APPROVED AND ORDERED:

23
24 Dated: _____

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

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28
[PROPOSED] CONSENT JUDGMENT AS TO PHARMAVITE LLC, CVS PHARMACY, INC., THRIFTY
PAYLESS, INC. (ERRONEOUSLY SUED AS RITE AID CORPORATION); ORDER - 15

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Dated: _____

Chris Manthey

Dated: _____

Benson Chiles

APPROVED AS TO FORM:

Dated: _____

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

By: _____

Laura Baughman
Attorneys for Plaintiffs

Dated: 12-10-12

Tatro Tekosky Sadwick LLP

By:  _____

Steven R. Tekosky
Attorneys for Defendants

APPROVED AND ORDERED:

Dated: _____

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

EXHIBIT A – “DIETARY SUPPLEMENT PRODUCTS”

The Dietary Supplement Products shall be Nature Made Cod Liver Oil, Nature Made Odorless Fish Oil, Spring Valley Natural Cod Liver Oil, Spring Valley Cod Liver Oil Vitamin A & D and all other dietary supplements containing fish oils, fish, shark or cod liver oils, shark or squid oils, krill oil, algae oils, and other oils containing eicosapentaenoic acid (“EPA”) and / or docosahexaenoic acid (“DHA”) for human consumption containing the Proposition 65 listed chemical polychlorinated biphenyls (“PCBs”) which are manufactured by, for, or on behalf of, Defendant Pharmavite LLC (for purposes of this Exhibit A only, “Defendant Pharmavite LLC” shall include its now or hereafter existing parent companies, corporate affiliates, and direct and indirect subsidiaries) and 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.

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

EXHIBIT B—NOTICE LETTERS AND COMPLAINT

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**[PROPOSED] CONSENT JUDGMENT AS TO PHARMAVITE LLC, CVS PHARMACY, INC., THRIFTY
PAYLESS, INC. (ERRONEOUSLY SUED AS RITE AID CORPORATION); ORDER - 17**



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 A. WEIL DEPUTY ATTORNEY GENERAL OFFICE OF THE ATTORNEY GENERAL P.O. BOX 70350 OAKLAND, CA 94612-0350	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUMBIA P.O. BOX 410 WILLOWS, CA 95591	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTREY 210 CHURCH STREET P.O. BOX 1111 SALINAS, CA 95501	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIQUA P.O. BOX 916 YREKA, CA 96097	KARL RUDOLPH, PRESIDENT SOLGAR, INC. 2100 SMITH TOWN AVENUE ROCKFORD, ILL 61179
OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND 305 14TH ST. 12TH FLOOR OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HUMBOLDT 925 5TH ST. EUREKA, CA 95501	COUNTY OF NAPA 931 PARKWAY MALL P.O. BOX 720 NAPA, CA 94559-0720	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SOLANO 600 UNION AVE FAIRFIELD, CA 94533	WILLIAM W. NICHOLSON, CEO TYPICAL CORPORATION 612 BROADWAY 11TH FL. NEW YORK, NY 10012
OFFICE OF THE CITY ATTORNEY CITY OF SAN FRANCISCO CITY HALL ROOM 1206 400 VAN NESS SAN FRANCISCO, CA 94102	COUNTY OF IMPERIAL COURTHOUSE, FLOOR 2 919 W. MAIN ST. IMPERIAL, CA 92343	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NUBADA 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 184 SACRAMENTO, CA 95812-0184	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF INYO P.O. DRAWER D INDIENAVILLE, CA 93526	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ORANGE 401 CIVIC CENTER DR. WEST SANTA ANA, CA 92701	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF STANISLAUS 11001 ST. #100 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 11501 B AVE AUBURN, CA 95603-2407	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 100 CIVIC CENTER BLVD. #A YUBA CITY, CA 95993	
OFFICE OF THE CITY ATTORNEY CITY OF LOS ANGELES 200 N. MAIN ST. LOS ANGELES, CA 90012	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KINGS 1400 W. LAKE BLVD. LANCASTER, CA 93530	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLUMAS 310 MAIN STREET #104 QUINCY, CA 95771	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA P.O. BOX 519 RED BLUFF, CA 96080	
OFFICE OF THE CITY ATTORNEY CITY OF SAN DIEGO ENVIRONMENTAL PROTECTION 1200 THIRD AVENUE, SUITE 100 SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LAKE 315 W. FOREST ST. #121 LANCASTER, CA 93533	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF RIVERSIDE 4075 MAIN ST. RIVERSIDE, CA 92501	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TULARE COURTHOUSE #221 VISALIA, CA 93291	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALAMEDA 1225 FALLON STREET ROOM 900 OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LASSEN 210 SOUTH LASSEN ST. 5TH F. SUSANVILLE, CA 96130	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BENITO 419 4TH ST. HOLLISTER, CA 95023	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TUOLUMNE 2 S. GREEN ST. SONOMA, CA 95070	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALPINE P.O. BOX 218 MARKLEEVILLE, CA 94020	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 21601 YUBA AVE. SAN BERNARDINO, CA 92415-0004	VENTURA COUNTY DISTRICT ATTORNEY'S OFFICE 100 SOUTH VICTORIA AVE VENTURA, CA 93003	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMADOR 700 COURT STREET JACKSON, CA 95622	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MADRERA 200 W. VOSSEN AVE. MADERA, CA 95337	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO 310 W. BROADWAY SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 215 5TH ST. MAYSVILLE, CA 95901	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 35 COUNTY CENTER DR. OROVILLE, CA 95963	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIN HALL OF JUSTICE #101 SAN RAFAEL, CA 94903	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 272 E. WEBER AVE #102 STOCKTON, CA 95202	THOMAS M. RYAN, CEO CVS PHARMACY, INC. ONE CVS DRIVE WOODSOCKET, RI 02893	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAVERAS GOVERNMENT CENTER 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA 95320	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARICOPA P.O. BOX 710 MARICOPA, CA 95338	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JUAN 1112 SANTA BARBARA ST. SANTA BARBARA, CA 93101	THOMAS M. RYAN, CEO LONOS DRUG STORES, L.L.C. C/O CVS PHARMACY, INC. ONE CVS DRIVE WOODSOCKET, RI 02893	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUSA 547 MARKET STREET COLUSA, CA 95932	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MINNEAPOLIS P.O. BOX 1400 UMIAH, CA 95542	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA BARBARA 1112 SANTA BARBARA ST. SANTA BARBARA, CA 93101	JOSEPH FORTUNATO, CEO GENERAL NUTRITION CORPORATION 340 SIXTH AVE PITTSBURGH, PA 15222	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CONTRA COSTA P.O. BOX 670 MARTINEZ, CA 94533	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MERCED 212 N. ST. MERCED, CA 95340	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CRUZ 701 OCEAN ST. #200 SANTA CRUZ, CA 95060	ALBERT P. POWERS, PRESIDENT NOW IDEALISTIC GROUP, INC. 355 S. GILMAN BLVD. RD. MCKINNALE, IL 60130	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF DEL Norte 430 N. ST. #101 CRESCENT CITY, CA 95531	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONDO 201 SOUTH COURT STREET ATUNAS, CA 94101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CRUZ 701 OCEAN ST. #200 SANTA CRUZ, CA 95060	JOSEPH L. VON ROSENBERG, III, PRESIDENT OMEGA PROTEIN, INC. 2101 CITY WEST BLVD, BLDG 3, STE 500 HOUSTON, TX 77053	
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 BRIDGECRIST, CA 95317	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SHASTA 1225 COURT ST. REDDING, CA 96001	SHUN UCHIDA, CEO PHARMACEUTICALS LLC 810 BALBOA BLVD STE 100 NORTHridge, CA 91325	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF FRESNO 210 TULARE ST #100 FRESNO, CA 93721		OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SIERRA P.O. BOX 457 DOWNSVILLE, CA 95536	CONNOR BARRY, CEO PHARMACEUTICALS LLC 810 BALBOA BLVD STE 100 NORTHridge, CA 91325	
			MARY SAMMONS, CEO RHS 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.

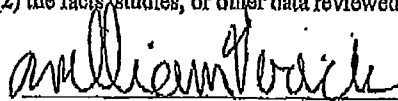
TWINLAB CORPORATION

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

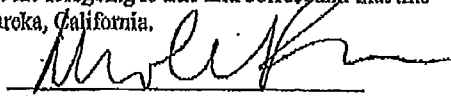

William Verick

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 compliance 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,

CASE NO

CGC-10-497334

24 Plaintiffs,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

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

TOXIC TORT/ENVIRONMENTAL

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 9:24 AM

DEPARTMENT 212

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 Eureka, California, and is incorporated under the laws of
25 the State of California. All plaintiffs are "persons" pursuant to Health & Safety Code Section
26 25118. Plaintiffs bring this enforcement action in the public interest pursuant to Health & Safety
27
28

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

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

12 7. Plaintiffs bring this enforcement action against Defendants pursuant to Health &
13 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of the
14 60-day Notice letter, dated August 6, 2009, which Plaintiffs sent to California's Attorney
15 General. Letters identical in substance were sent to every District Attorney in the state, and to the
16 City Attorneys of every California city with a population greater than 750,000. On the same
17 date, Plaintiffs sent an identical 60 Day Notice letter to Defendants. Attached to the 60-Day
18 Notice Letter sent to the Defendants was a summary of Proposition 65 that was prepared by
19 California's Office of Environmental Health Hazard Assessment. In addition, the 60-Day Notice
20 Letter Plaintiffs sent was accompanied by a Certificate of Service attesting to the service of the
21 60-Day Notice Letter on each entity which received it. Pursuant to California Health & Safety
22 Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis
23 for the action was also sent with the 60-Day Notice Letter. Factual information sufficient to
24 establish the basis of the Certificate of Merit was enclosed with the 60-Day Notice letter
25
26
27
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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.
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1 D. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to
2 Plaintiffs the attorneys fees and costs it incurred in bringing this enforcement action.

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