

DEC 1 1 2012

CLERK OF THE COURT

BY: Julia Green
Deputy Clerk

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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,

**[PROPOSED] CONSENT JUDGMENT AS
TO OMEGA PROTEIN, INC.; ORDER**

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
28

Defendants.

29 **I. INTRODUCTION**

30 1.1 On March 2, 2010, Chris Manthey and Benson Chiles (collectively, "Plaintiffs"),
31 acting in the public interest, filed a complaint for civil penalties and injunctive relief in San
32 Francisco Superior Court, Case No. 497334 ("Complaint") against CVS Pharmacy, Inc.,
33 General Nutrition Corp., NOW Health Group, Inc., Omega Protein, Inc., Rite Aid Corp., Solgar,
34

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 Omega Protein, Inc. ("Settling Defendant"). The Products covered by
10 this Consent Judgment are described in Exhibit A attached hereto (the "Covered Products"). If
11 Plaintiffs in the future inquire whether a Product is a Covered Product subject to this Consent
12 Judgment, Settling Defendant shall respond promptly (and in any event within fourteen (14)
13 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 (whatever is the latest date)
26 by Settling Defendant.

27 **2.2** A determinative level ("Determinative Level") of PCBs in any Dietary
28 Supplement Product for purposes of this Consent Judgment shall be established if Settling

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

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

25 **III. CLEAR AND REASONABLE WARNINGS**

26 **3.1 Warning Standard**

27 Beginning with the date that is ninety (90) days after the Effective Date (as defined in
28 Section X) of this Consent Judgment (the "Compliance Date"), Settling Defendant shall not

1 manufacture for sale in the State of California, distribute into the State of California, or sell
2 directly to a consumer in the State of California any Covered Product that exceeds an exposure
3 limit for polychlorinated biphenyls ("PCBs") of 290 nanograms per day for birth defects and
4 reproductive harm, or exceeds the exposure limit for PCBs of 350 nanograms per day for
5 cancer, based on the maximum daily dosage recommended on the Covered Product label, unless
6 a warning is placed on the packaging, labeling or directly to or on the Product that states:

7 "[CALIFORNIA PROPOSITION 65] WARNING:

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

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

1 **3.2 Mail Order Sales**

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

9 **3.3 Internet Sales**

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

21 **3.4 Any non-discretionary changes to the language or format of the warnings**
22 required herein shall be made only after Court approval or obtaining Plaintiffs' and the
23 California Attorney General's approval. If Settling Defendant requests a non-discretionary
24 change in language or format of the warnings and neither Plaintiffs nor the Attorney General
25 responds to that request within forty-five (45) days, then Settling Defendant may move the
26 Court via a noticed motion to modify this Consent Judgment. The Parties agree that, if warning
27 trigger levels for PCBs change due to either Plaintiffs or the California Office of Environmental
28 Health Hazard Assessment ("OEHHA") adopting (as set forth in Section 3.6) final "safe harbor"

1 figures which are higher than 290 nanograms per day, then adjustments to the warning text for
2 accuracy shall be deemed a discretionary change.

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

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

20 **IV. MONETARY RELIEF**

21 4.1 Settling Defendant shall pay Plaintiffs a total of \$30,000.00 ("Settlement
22 Proceeds") within sixty (60) days of the Effective Date. The Settlement Proceeds shall be made
23 payable to Baron & Budd, P.C. and delivered to Laura Baughman at Baron & Budd, P.C., 3102
24 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219. Of the Settlement Proceeds, \$2,000.00 shall
25 be deemed a Civil Penalty. Plaintiffs shall bear all responsibility for apportioning and paying to
26 the State of California any portion of the Settlement Proceeds as required by California Health
27 & Safety Code § 25249.12(d), and Settling Defendant shall have no liability if payments to the
28 State of California are not made by Plaintiffs.

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

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

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

17 **VI. MODIFICATION OF CONSENT JUDGMENT**

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

24 **VII. APPLICATION OF CONSENT JUDGMENT**

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

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

4 **VIII. CLAIMS COVERED**

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

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

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

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

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

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

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

1 manufactured, distributed or sold prior to the Compliance Date, even if sale to, or use by,
2 California consumers of such Covered Products occurs after the Compliance Date.

3 **8.3 Release of Plaintiffs**

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

8 **IX. RETENTION OF JURISDICTION**

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

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

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

20 **XI. ENFORCEMENT**

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

26 **XII. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by

1 reason of law generally, or as to the Covered Products specifically, then Settling Defendant
2 shall have no further obligations pursuant to this Consent Judgment with respect to those
3 Products that are so affected.

4 **XIII. EXCHANGE IN COUNTERPARTS**

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

8 **XIV. NOTICES**

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

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

16 Laura J. Baughman, Esq.
17 Baron & Budd, P.C.
18 3102 Oak Lawn Avenue, Suite 1100
19 Dallas, TX 75219

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

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

26 John D. Held, Esq.
27 Executive Vice President, General Counsel,
28 and Secretary
Omega Protein, Inc.
2105 City West Boulevard, Suite 500
Houston, TX 77042-2838

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 **APPROVED AND AGREED TO:**

17 Dated: _____

18
19 _____
20 Omega Protein, Inc.
21 John D. Held, Esq.
22 Executive Vice President, General Counsel,
23 and Secretary

24 Dated: 12/6/12

25 _____
26 Chris Manthey

27 Dated: 12/7/12

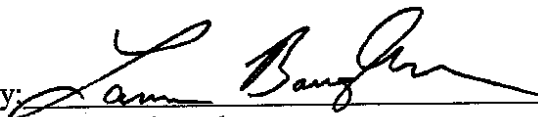
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Benson Chiles

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APPROVED AS TO FORM:

Dated: 12/7/2012

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

By: 
Laura Baughman
Attorneys for Plaintiffs

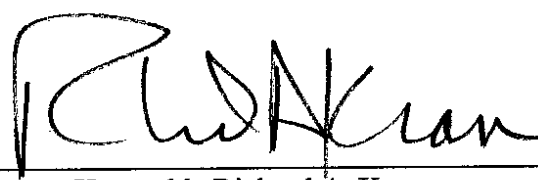
Dated: _____

ARNOLD & PORTER LLP

By: _____
Trenton H. Norris
Attorneys for Settling Defendant

APPROVED AND ORDERED:

Dated: 12-11-12


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

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APPROVED AS TO FORM:

Dated: _____

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

By: _____

Laura Baughman
Attorneys for Plaintiffs

Dated: 12/6/12

ARNOLD & PORTER LLP

By: Trenton H. Norris

Trenton H. Norris
Attorneys for Settling Defendant

APPROVED AND ORDERED:

Dated: _____

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

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

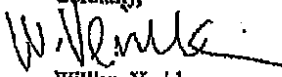
EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 70550
OAKLAND CA 94612-0550

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

Cordially,


William Verick

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

(, . (

ESHO, CA 93721

WOODBURY, CA 93317

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SIERRA
P.O. BOX 452
WYNEVILLE, CA 95236

MARY BANNONS, CEO
ITT AND CORPORATION
10 HUNTER LANE
HAMP 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.

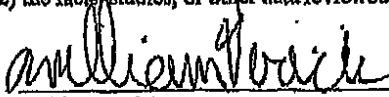
TWINLAB CORPORATION

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; RTE 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 SBT

JUL 30 2010 9:00 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
14 Defendants manufacture, distribute, and/or market fish oil supplements. Defendants' products
15 cause exposures to PCBs, which are chemicals known to the State of California to cause cancer,
16 birth defects and other reproductive harm.
17

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

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

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

8
9 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
10 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known
11 to cause cancer, birth defects and other reproductive harm. Plaintiff also seeks an order that
12 Defendants identify and locate each individual person who in the past has purchased Defendants'
13 fish oil supplements and to provide to each such purchaser a clear and reasonable warning that
14 those fish oil supplements cause exposures to chemicals known to cause cancer and birth defects.
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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 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

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

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.

3
4 5. For such other relief as this court deems just and proper.
5
6
7

8 Dated: February 24, 2010

KLAMATH ENVIRONMENTAL LAW CENTER

9
10 By 

11 William Verick

12 Attorney for Plaintiffs Christopher Manthey,
13 Benson Chiles and the Mateel Environmental Justice
14 Foundation
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24
25
26
27
28

800.222.2766
tel 214.521.3605
fax 214.520.1181

3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219-4283

August 5, 2011

Via First Class U.S. Mail

Current CEO or President
Thrifty Payless, Inc.
P.O. Box 3165
Harrisburg, PA 17011

Current CEO or President
Wal-Mart Stores, Inc.
702 SW 8th Street, Dept. 8687, M.S. #0555
Bentonville, AR 72716

Current CEO or President
AmerisourceBergen Drug Corporation
P.O. Box 959
Valley Forge, PA 19482

Current CEO or President
AmerisourceBergen Drug Corporation d/b/a
Good Neighbor Pharmacy
P.O. Box 959
Valley Forge, PA 19482

Current CEO or President
Stansfeld Scott Inc.
630 Brooker Creek Blvd., Ste. 325
Oldsmar, Florida 34677

Current CEO or President
NBTY, Inc.
2100 Smithtown Avenue
Ronkonkoma, NY 11779

Current CEO or President
NBTY, Inc. d/b/a Good 'N Natural
2100 Smithtown Avenue
Ronkonkoma, NY 11779

**Re: Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986
(Proposition 65), Section 25249.6 of the California Health and Safety Code, for
Exposing Consumers to PCBs**

Dear Sir/Madam:

Chris Manthey and Benson Chiles (hereinafter "Noticing Parties") are private enforcers of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5 *et seq.* ("Proposition 65").

This letter constitutes notice that the entities identified in Exhibit A have violated and continue to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5 *et seq.* Specifically, these entities have violated and continue to violate the warning requirement at section 25249.6 of the California Health and Safety Code, which provides, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause



cancer or reproductive toxicity without first giving clear and reasonable warning to such individual..."

The list of entities subject to this Notice is attached as Exhibit A. Consumer supplements that are made wholly, or partly, from fish oil ("fish oil dietary supplements") sold by these entities contain polychlorinated biphenyls ("PCBs"), a chemical known to the State to cause reproductive toxicity and cancer. On each and every day from August 5, 2010 through the present, these entities have exposed and continue to expose consumers of their fish oil dietary supplements to PCBs. Exposure to the consumers has occurred through ingestion of the fish oil dietary supplements. Specific examples of fish oil dietary supplement products that are the subject of this Notice are identified in the document attached as Exhibit B.

Because PCBs are a chemical listed in Proposition 65 as a human carcinogen and a reproductive toxin, pursuant to Health and Safety Code § 25249.6 the entities in Exhibit A were, and are, required to provide clear and reasonable warnings to all consumers of fish oil dietary supplements before exposing them to PCBs. Pursuant to Health and Safety Code section 25249.7(d), the Noticing Parties intend to bring suit in the public interest against the entities in Exhibit A sixty days hereafter to correct the violation occasioned by the failure to warn all consumers of the exposure to PCBs.

Pursuant to 27 California Code of Regulations § 25903(b)(1), attached is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Pursuant to Health and Safety Code § 25249.7(d)(1), the undersigned hereby includes with the copy of this notice a Certificate of Merit.

While violations are occurring throughout the State of California, the noticing parties are unable to know for certain if violations are occurring in all of the 58 counties in California. Therefore, pursuant to 27 California Code of Regulations § 25903(c)(3), the noticing parties are providing this notice to the district attorney for each of the 58 counties in California. Further, the noticing parties provide this notice to the California Attorney General and the city attorneys for the cities of Los Angeles, San Diego, San Francisco and San Jose.

The Noticing Parties are represented in this matter by the law firm of Baron & Budd, P.C. All communications concerning this matter should be directed to:

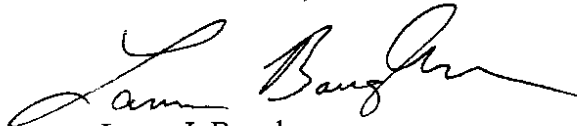
Laura Baughman
Baron & Budd, P.C.
3102 Oak Lawn Ave., Suite 1100
Dallas, Texas 75219
(214) 521-3605.



August 5, 2011
Page 3

Sincerely,

BARON & BUDD, P.C.



Laura J. Baughman

LJB/abw

Enclosures

cc: Attorney General of California
(with attached confidential factual information supporting Certificate of Merit)
Los Angeles City Attorney
San Diego City Attorney
City Attorney of San Francisco
San Jose City Attorney
District Attorneys for California's 58 Counties
(see attached certificate of service)

Exhibit A

Current CEO or President
Thrifty Payless, Inc.
P.O. Box 3165
Harrisburg, PA 17011

Current CEO or President
AmerisourceBergen Drug Corporation
P.O. Box 959
Valley Forge, PA 19482

Current CEO or President
Stansfeld Scott Inc.
630 Brooker Creek Blvd., Ste. 325
Oldsmar, Florida 34677

Current CEO or President
NBTY, Inc. d/b/a Good 'N Natural
2100 Smithtown Avenue
Ronkonkoma, NY 11779

Current CEO or President
Wal-Mart Stores, Inc.
702 SW 8th Street, Dept. 8687, M.S. #0555
Bentonville, AR 72716

Current CEO or President
AmerisourceBergen Drug Corporation d/b/a
Good Neighbor Pharmacy
P.O. Box 959
Valley Forge, PA 19482

Current CEO or President
NBTY, Inc.
2100 Smithtown Avenue
Ronkonkoma, NY 11779

Exhibit B

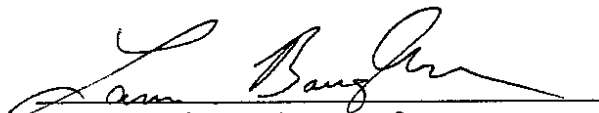
1. Rite Aid Pharmacy Cod Liver Oil
2. Spring Valley Natural Cod Liver Oil Vitamin A & D
3. Spring Valley Wild Norwegian Salmon Oil, 1000 mg softgels
4. Good Neighbor Cod Liver Oil
5. Seven Seas Cod Liver Oil
6. Good 'N Natural Salmon Oil, 1000 mg softgels

CERTIFICATE OF MERIT
Health & Safety Code Section 25249.7(d)

I, Laura Baughman, hereby declare:

1. This Certificate of Merit accompanies the attached notice of violation in which it is alleged that the parties identified in the notice have violated Health & Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney representing Chris Manthey and Benson Chiles.
3. 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 alleged exposure to the listed chemical that is the subject of the action.
4. 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.
5. 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 & Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 5, 2011

A handwritten signature in black ink, appearing to read "Laura Baughman", is written over a horizontal line.

Laura Baughman, Attorney for
Chris Manthey and Benson Chiles

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY**

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts: Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION. . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

CERTIFICATE OF SERVICE

I am employed in the City of Dallas in the County of Dallas, Texas. I am over the age of eighteen years and not a party to the within action. My business address is 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219.

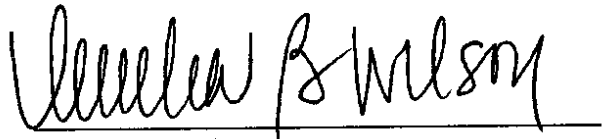
On August 5, 2011 I served the following document(s):

**Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986
(Proposition 65), Section 25249.6 of the California Health and Safety Code, for
Exposing Consumers to PCBs**

by UNITED STATES FIRST CLASS MAIL by placing a true and correct copy thereof in an envelope addressed to each of the persons named below at the address shown, and by sealing and depositing said envelope in the United States mail at Dallas, Texas, with postage fully prepaid to:

See Attached List.

Executed on this 5th day of August, 2011 at Dallas, Texas. I declare under penalty of perjury under the laws of the State of California and Texas that the foregoing is true and correct.


Amelia B. Wilson

SERVICE LIST

Current CEO or President
Thrifty Payless, Inc.
P.O. Box 3165
Harrisburg, PA 17011

Current CEO or President
AmerisourceBergen Drug Corporation
P.O. Box 959
Valley Forge, PA 19482

Current CEO or President
Stansfeld Scott Inc.
630 Brooker Creek Blvd., Ste. 325
Oldsmar, Florida 34677

Current CEO or President
NBTY, Inc. d/b/a Good 'N Natural
2100 Smithtown Avenue
Ronkonkoma, NY 11779

Current CEO or President
Wal-Mart Stores, Inc.
702 SW 8th Street, Dept. 8687, M.S. #0555
Bentonville, AR 72716

Current CEO or President
AmerisourceBergen Drug Corporation d/b/a Good
Neighbor Pharmacy
P.O. Box 959
Valley Forge, PA 19482

Current CEO or President
NBTY, Inc.
2100 Smithtown Avenue
Ronkonkoma, NY 11779

District Attorney of Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney of Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney of Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney of Calaveras County
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Fresno, CA 93721

District Attorney of Glenn County
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Willows, CA 95988

District Attorney of Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney of Imperial County
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El Centro, CA 92243

District Attorney of Inyo County
P.O. Drawer D
Independence, CA 93526

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Crescent City, CA 95531

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Santa Barbara, CA 93101

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Visalia, CA 93291

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Sonora, CA 95370

District Attorney of Ventura County
800 South Victoria Ave
Ventura, CA 93009

District Attorney of Yolo County
301 Second Street
Woodland, CA 95695

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

San Jose City Attorney's Office
151 West Mission Street
San Jose, CA 95110

Los Angeles City Attorney's Office
Room 1800, City Hall East
200 N. Main Street
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, 12th Floor
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102

California Attorney General's Office
Attn: Proposition 65 Coordinator
1515 Clay Street
Oakland, CA 94612

800.222.2766
tel 214.521.3605
fax 214.520.1181

3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219-4283

February 1, 2012

Via First Class U.S. Mail

Current CEO or President
NBTY, Inc. d/b/a Nature's Bounty
110 Orville Drive
Bohemia, NY 11716

Current CEO or President
NBTY, Inc.
2100 Smithtown Avenue
Ronkonkoma, NY 11779

Re: Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code, for Exposing Consumers to PCBs

Dear Sir/Madam:

Chris Manthey and Benson Chiles (hereinafter "Noticing Parties") are private enforcers of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5 *et seq.* ("Proposition 65").

This letter constitutes notice that the entities identified in Exhibit A have violated and continue to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5 *et seq.* Specifically, these entities have violated and continue to violate the warning requirement at section 25249.6 of the California Health and Safety Code, which provides, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual..."

The list of entities subject to this Notice is attached as Exhibit A. Consumer supplements that are made wholly, or partly, from fish oil ("fish oil dietary supplements") sold by these entities contain polychlorinated biphenyls ("PCBs"), a chemical known to the State to cause reproductive toxicity and cancer. On each and every day from February 1, 2011 through the present, these entities have exposed and continue to expose consumers of their fish oil dietary supplements to PCBs. Exposure to the consumers has occurred through ingestion of the fish oil dietary supplements. Specific examples of fish oil dietary supplement products that are the subject of this Notice are identified in the document attached as Exhibit B.

Because PCBs are a chemical listed in Proposition 65 as a human carcinogen and a reproductive toxin, pursuant to Health and Safety Code § 25249.6 the entities in Exhibit A were, and are, required to provide clear and reasonable warnings to all consumers of fish oil dietary supplements before exposing them to PCBs. Pursuant to Health and Safety Code section 25249.7(d), the Noticing Parties intend to bring suit in the public interest against the entities in Exhibit A sixty days hereafter to correct the violation occasioned by the failure to warn all consumers of the exposure to PCBs.



February 1, 2012

Page 2

Pursuant to 27 California Code of Regulations § 25903(b)(1), attached is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Pursuant to Health and Safety Code § 25249.7(d)(1), the undersigned hereby includes with the copy of this notice a Certificate of Merit.

While violations are occurring throughout the State of California, the noticing parties are unable to know for certain if violations are occurring in all of the 58 counties in California. Therefore, pursuant to 27 California Code of Regulations § 25903(c)(3), the noticing parties are providing this notice to the district attorney for each of the 58 counties in California. Further, the noticing parties provide this notice to the California Attorney General and the city attorneys for the cities of Los Angeles, San Diego, San Francisco and San Jose.

The Noticing Parties are represented in this matter by the law firm of Baron & Budd, P.C. All communications concerning this matter should be directed to:

Laura Baughman
Baron & Budd, P.C.
3102 Oak Lawn Ave., Suite 1100
Dallas, Texas 75219
Telephone: (214) 521-3605
Email: lbaughman@baronbudd.com.

Sincerely,

BARON & BUDD, P.C.

Laura J. Baughman

LJB/abw

Enclosures

cc: Attorney General of California
(with attached confidential factual information supporting Certificate of Merit)
Los Angeles City Attorney
San Diego City Attorney
City Attorney of San Francisco
San Jose City Attorney
District Attorneys for California's 58 Counties (see attached certificate of service)
Judith Praitis, Esq.

Exhibit A

Current CEO or President
NBTY, Inc. d/b/a Nature's Bounty
110 Orville Drive
Bohemia, NY 11716

Current CEO or President
NBTY, Inc.
2100 Smithtown Avenue
Ronkonkoma, NY 11779

Exhibit B

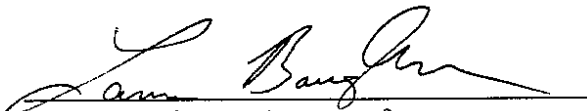
1. Nature's Bounty Omega-3 Norwegian Cod Liver Oil, 100 softgels
2. Nature's Bounty Cold Water Salmon Oil 1000 mg softgels

CERTIFICATE OF MERIT
Health & Safety Code Section 25249.7(d)

I, Laura Baughman, hereby declare:

1. This Certificate of Merit accompanies the attached notice of violation in which it is alleged that the parties identified in the notice have violated Health & Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney representing Chris Manthey and Benson Chiles.
3. 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 alleged exposure to the listed chemical that is the subject of the action.
4. 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.
5. 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 & Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 1, 2012

A handwritten signature in black ink, appearing to read "Laura Baughman", is written over a horizontal line.

Laura Baughman, Attorney for
Chris Manthey and Benson Chiles

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY**

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts: Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

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Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

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A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

CERTIFICATE OF SERVICE

I am employed in the City of Dallas in the County of Dallas, Texas. I am over the age of eighteen years and not a party to the within action. My business address is 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219.

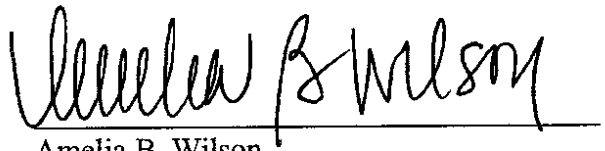
On February 1, 2012, I served the following document(s):

**Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986
(Proposition 65), Section 25249.6 of the California Health and Safety Code, for
Exposing Consumers to PCBs**

by UNITED STATES FIRST CLASS MAIL by placing a true and correct copy thereof in an envelope addressed to each of the persons named below at the address shown, and by sealing and depositing said envelope in the United States mail at Dallas, Texas, with postage fully prepaid to:

See Attached List.

Executed on this 1st day of February, 2012 at Dallas, Texas. I declare under penalty of perjury under the laws of the State of California and Texas that the foregoing is true and correct.


Amelia B. Wilson

SERVICE LIST

Current CEO or President
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110 Orville Drive
Bohemia, NY 11716

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2100 Smithtown Avenue
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San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102

California Attorney General's Office
Attn: Proposition 65 Coordinator
1515 Clay Street
Oakland, CA 94612

1 LAURA J. BAUGHMAN (SBN 263944)
2 BARON & BUDD, P.C.
3 3102 Oak Lawn Avenue, Suite 1100
4 Dallas, TX 75219
5 Tel.: (214) 521-3605/Fax: (214) 520-1181
6 lbaughman@baronbudd.com

7 APRIL STRAUSS (SBN 163327)
8 LAW OFFICE OF APRIL STRAUSS
9 2500 Hospital Drive, Suite 3B
10 Mountain View, CA 94040
11 Tel: 650-281-7081
12 astrauss@sfaclp.com

13 Attorneys for Plaintiffs,
14 CHRIS MANTHEY and BENSON CHILES

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28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
(Unlimited Jurisdiction)

CHRIS MANTHEY and BENSON CHILES,

Case No.: CGC-10-497334

Plaintiffs,

v.

**PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

Defendants.

1 CHRIS MANTHEY and BENSON CHILES allege as follows:

2 **INTRODUCTION**

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

15 2. Defendants are businesses that manufacture, market, and/or distribute fish oil
16 supplements. Defendants intend that residents of California ingest fish oil supplements that
17 Defendants manufacture, market, and/or distribute. When these products are ingested in their
18 normally intended manner, they expose people to PCBs. In spite of knowing that residents of
19 California were and are being exposed to PCBs when they ingest Defendants' fish oil
20 supplements, Defendants did not and do not provide clear and reasonable warnings that these
21 products cause exposure to chemicals known to cause cancer, birth defects and other reproductive
22 harm. The fish oil supplements to which this Complaint pertains are those referenced in the
23 Products Lists that accompanied the 60 Day Notice Letters, which are appended to and
24 incorporated by reference in this Complaint.

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27 ¹ On information and belief, Plaintiffs allege that NBTY, Inc. is liable for the actions alleged
28 herein that may have been caused by its direct or indirect subsidiaries, if any, under the theory of
agency.

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

6 4. In addition to injunctive relief, Plaintiffs seek civil penalties to remedy the failure
7 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known to
8 cause cancer, birth defects and other reproductive harm. Plaintiffs also seek an order that
9 Defendants identify and locate each individual person who in the past has purchased Defendants'
10 fish oil supplements and to provide to each such purchaser a clear and reasonable warning that
11 those fish oil supplements cause exposures to chemicals known to cause cancer and birth defects.

12 PARTIES

13 5. Plaintiffs Christopher Manthey and Benson Chiles are individuals concerned about
14 human health and environmental protection. Plaintiffs are "persons" pursuant to Health & Safety
15 Code Section 25118. Plaintiffs bring this enforcement action in the public interest pursuant to
16 Health & Safety Code §25249.7(d). Residents of California are regularly exposed to PCBs from
17 fish oil supplements manufactured, distributed or marketed by Defendants and are intentionally so
18 exposed without a clear and reasonable Proposition 65 warning.

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

25 7. Plaintiffs bring this enforcement action against Defendants pursuant to Health &
26 Safety Code Section 25249.7 (d). Attached hereto and incorporated by reference are copies of the
27 60 – day Notice letters, dated August 6, 2009, August 5, 2011, and February 1, 2012, which
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1 Plaintiffs sent to California's Attorney General. Letters identical in substance were sent to every
2 District Attorney in the state, and to the City Attorneys of every California city with a population
3 greater than 750,000. On the same date, Plaintiffs sent an identical 60 Day Notice letter to
4 Defendants. Attached to each 60-Day Notice Letter sent to the Defendants was a summary of
5 Proposition 65 that was prepared by California's Office of Environmental Health Hazard
6 Assessment. In addition, each 60-Day Notice Letter Plaintiffs sent was accompanied by a
7 Certificate of Service attesting to the service of the 60-Day Notice Letter on each entity which
8 received it. Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate of Merit
9 attesting to the reasonable and meritorious basis for the action was also sent with each 60-Day
10 Notice Letter. Factual information sufficient to establish the basis of the Certificate of Merit was
11 enclosed with each 60-Day Notice letter Plaintiffs sent to the Attorney General.

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

13 JURISDICTION

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

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

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

2 **FIRST CAUSE OF ACTION**
3 **(Claim for Injunctive Relief)**

4 12. Plaintiffs reallege and incorporate by reference into this First Cause of Action, as
5 if specifically set forth herein, paragraphs 1 through 11, inclusive.

6 13. The People of the State of California have declared by referendum under
7 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right “[t]o be informed
8 about exposures to chemicals that cause cancer, birth defects, and reproductive harm.”

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

13 15. Since at least August 6, 2006, Defendants have engaged in conduct that violates
14 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and intentionally
15 exposing to PCBs, those California residents who ingest fish oil supplements. The normally
16 intended use of fish oil supplements causes people to ingest PCBs, which are chemicals known to
17 the State of California to cause cancer, birth defects and other reproductive harm. Defendants have
18 not provided clear and reasonable warnings within the meaning of Health & Safety Code Section
19 25249.6 and 25249.11

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

24 17. By the above described acts, Defendants have violated Cal. Health & Safety Code
25 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition 65,
26 to provide warnings to all present and future customers, and to provide warnings to their past
27 customers who purchased Defendants’ products without receiving a clear and reasonable warning.
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18. Plaintiffs reallege and incorporate by reference into this Second Cause of Action, as if specifically set forth herein, paragraphs 1 through 17, inclusive.

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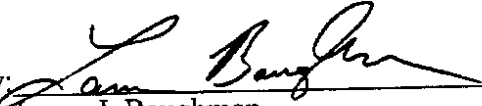
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1 Dated: Dec. 10, 2012

Respectfully submitted,

BARON & BUDD, P.C.

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9 CHRIS MANTHEY AND BENSON CHILES

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

12 CHRIS MANTHEY; BENSON CHILES; and
13 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

14 Plaintiffs,

15 v.

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

20 Defendants.

Case No. CGC-10-497334

PROOF OF SERVICE

PROOF OF SERVICE

I hereby certify that I am an employee of Baron & Budd, P.C. in the County of Dallas, State of Texas. I am over the age of 18 years and not a party to the within action; my business address is 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281. On December 10, 2012, I served a copy of the attached document titled:

**PLAINTIFFS' FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

on the parties listed below, as noted:

X (BY ELECTRONIC MAIL) By personally e-mailing a copy to the person(s) at the e-mail addresses listed below as follows; and/or

X (BY MAIL) I placed such sealed envelope with postage fully prepaid for first class mail, for collection and mailing at Baron & Budd, P.C., Dallas, Texas following ordinary business practices. I am readily familiar with the practice of Baron & Budd, P.C. for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection. The person(s) served by U.S. mail are named as follows; and/or

X (BY LEXIS NEXIS FILE AND SERVE) By personally uploading a copy to Lexis Nexis File and Serve, which will send a notification of filing to the person(s) named as follows:

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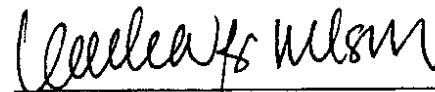
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FOUNDATION

22 I declare under penalty of perjury under the laws of the United States of America and the
23 State of Texas that the foregoing is true and correct.

24 Dated: December 10, 2012



Amelia B. Wilson
Legal Secretary to Laura J. Baughman