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14 Attorneys for Plaintiffs
15 Chris Manthey and Benson Chiles

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

18 CHRIS MANTHEY and BENSON CHILES,) Case No.: CGC-10-497334

19 Plaintiffs,

20 vs.

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

27 Defendants.

28 **[PROPOSED] CONSENT JUDGMENT AS
TO GENERAL NUTRITION CENTERS,
INC. (ERROUNEOUSLY SUED AS
GENERAL NUTRITION
CORPORATION) AND RITE AID
CORPORATION; ORDER**

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., Pharmavite LLC, Rite
34 Aid Corp., Solgar, Inc., and Twinlab Corp. (collectively, "Defendants"). In their Complaint,
35 Plaintiffs allege that Defendants manufactured, packaged, distributed, marketed and/or sold

36 **[PROPOSED] CONSENT JUDGMENT AS TO GENERAL NUTRITION CENTERS, INC. AND RITE AID
CORPORATION; ORDER - 1**

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

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

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

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

17 **II. MONITORING**

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

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

22 **2.3** Except for Supplemental Data, all data generated in compliance with Sections
23 2.1 and 2.2 herein shall be available to Plaintiffs within thirty (30) days of request therefor by
24 Settling Defendant’s delivering the information to Laura Baughman at Baron & Budd, P.C.,
25 3102 Oak Lawn Ave., Suite 1100, Dallas, TX 75219 (lbaughman@baronbudd.com). Plaintiffs
26 shall not request such data more often than once per calendar year, unless good cause is shown
27 to request data more frequently. No test data or other information need be maintained or
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1 delivered to Plaintiff corresponding to the time period a Dietary Supplement Product carries a
2 warning as provided for in Section 3.1. Plaintiffs shall keep all such information and data
3 confidential except as is necessary to contest whether the warning obligation of Section 3.1
4 below has been violated, and if such data or information is required to be presented to the Court,
5 Plaintiff shall do so under seal or take alternative measures to preserve the confidentiality of the
6 data or information. The provisions of this Paragraph 2.3 regarding Plaintiffs' inspection of
7 data shall sunset and have no further effect five years from the date this Consent Judgment is
8 entered by the Court.

9 **III. CLEAR AND REASONABLE WARNINGS**

10 **3.1 Warning Standard**

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

22
23 "[CALIFORNIA PROPOSITION 65] WARNING:
24 This product contains polychlorinated biphenyls ("PCBs"), a chemical known [to the
25 State of California] to cause cancer, birth defects, or other reproductive harm."

26 (hereinafter, "Product Label Warning"). The text in brackets ([]) is optional in a Settling
27 Defendant's sole discretion. To ensure accuracy in the warning text, a Settling Defendant may
28 omit either the word "cancer" or the phrase "birth defects, or other reproductive harm"

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

18 **3.2 Mail Order Sales**

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

25 **3.3 Internet Sales**

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

10 **3.4** Any change, other than a change within the Settling Defendants' discretion, by a
11 Settling Defendant to the language or format of the warnings required herein shall be made only
12 after Court approval or obtaining the approval of the California Attorney General and at least
13 one of the Plaintiffs. If any Settling Defendant proposes a change, other than a change within
14 the Settling Defendants' discretion, to the language or format of the warnings and (a) the
15 Attorney General or at least one of the Plaintiffs objects, or (b) neither Plaintiffs nor the
16 Attorney General responds within forty-five (45) days, then that Settling Defendant may move
17 the Court via a noticed motion to modify this Consent Agreement. The Parties agree that a
18 change to the warning text shall be deemed to be within a Settling Defendant's sole discretion if
19 the change corresponds to an alternative warning trigger level for PCBs that differs from a
20 warning trigger level set forth in this Consent Judgment and if either (a) the alternative warning
21 trigger level has been accepted by, agreed to by, or adopted in a judicial proceeding involving,
22 the Attorney General or at least one of the Plaintiffs or (b) the alternative warning trigger level
23 is derived from an NSRL above 350 nanograms of PCBs per day or a MADL above 290
24 nanograms of PCBs per day adopted by the California Office of Environmental Health Hazard
25 Assessment (as set forth in Section 3.6).

26 **3.5** Each Settling Defendant's compliance with Sections 3.1 through 3.4 of this
27 Consent Judgment shall fully and completely satisfy such Settling Defendant's obligations
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1 under Proposition 65 with respect to PCBs in the Dietary Supplement Products and,
2 additionally, all sales to California consumers of such Dietary Supplement Products by any
3 person shall be deemed to be in compliance with Proposition 65 with respect to PCBs. For the
4 avoidance of doubt, the Parties expressly agree sales of any Dietary Supplement Products any
5 Settling Defendant already has manufactured, distributed, or sold prior to the Compliance Date
6 shall not constitute a violation of this Consent Judgment, even if sales of such Dietary
7 Supplement Products to California consumers occur after the Compliance Date.

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

18 **IV. MONETARY RELIEF**

19 **4.1** Within fifteen (15) days after entry of this Consent Judgment, Settling Defendant
20 GNC shall pay Plaintiffs a total of \$110,000 (“Settlement Proceeds”). The Settlement Proceeds
21 shall be made payable to Baron & Budd, P.C. and delivered to Laura Baughman at Baron &
22 Budd, P.C., 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219. Of the Settlement
23 Proceeds, \$3,000 shall be deemed a Civil Penalty. Plaintiffs shall bear all responsibility for
24 apportioning and paying to the State of California any portion of the Settlement Proceeds as
25 required by California Health & Safety Code § 25249.12(d), and no Settling Defendant shall
26 have any liability if payments to the State of California are not made by Plaintiffs.

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

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

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

18 **VI. MODIFICATION OF SETTLEMENT**

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

25 **VII. APPLICATION OF CONSENT JUDGMENT**

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

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

7 **VIII. CLAIMS COVERED**

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

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

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

20 In further consideration of the promises and agreements herein contained, and for the
21 payment to be made pursuant to Section 4.1, Plaintiffs, on behalf of themselves, their past and
22 current agents, representatives, attorneys, successors and/or assignees, and Plaintiffs, in their
23 representative capacity in the interest of the general public, hereby release and waive all rights
24 to institute or participate in, directly or indirectly, any form of legal action addressing any and
25 all claims occurring on or before the entry of this Consent Judgment, and release all claims
26 occurring on or before the entry of this Consent Judgment, including, without limitation, all
27 actions, causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
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1 costs, fines, penalties, losses or expenses, including, but not limited to, investigation fees, expert
2 fees and attorneys' fees of any nature whatsoever, whether known or unknown, fixed or
3 contingent against each of the Settling Defendants and each of their suppliers, contract
4 manufacturers, owners, parent companies, corporate affiliates, subsidiaries, distributors,
5 retailers and their respective officers, directors, attorneys, representatives, shareholders, agents,
6 and employees arising under Proposition 65 related to each Settling Defendant's alleged failure
7 to warn about exposures to or identification of PCBs contained in the Dietary Supplement
8 Products.

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

20 In addition, Plaintiffs, on behalf of themselves, their attorneys and agents, release and
21 waive all rights to institute or participate in, directly or indirectly, any form of legal action
22 addressing any and all claims occurring on or before the entry of this Consent Judgment, and
23 release all claims occurring on or before the entry of this Consent Judgment against the Settling
24 Defendants arising under Proposition 65 related to each of the Settling Defendants' alleged
25 failure to warn about exposures to or identification of PCBs contained in the Dietary
26 Supplement Products and for all actions or statements regarding the alleged failures to warn
27 about exposures to or identification of PCBs contained in the Dietary Supplement Products
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1 made by each of the Settling Defendants or its attorneys or representatives in the course of
2 responding to those alleged violations of Proposition 65 as alleged in the Complaint. For the
3 avoidance of doubt, Plaintiffs expressly agree that all of the foregoing releases, waivers,
4 agreements and acknowledgments in Sections 8.1 and 8.2, including those made by Plaintiffs in
5 their representative capacity in the interest of the general public, apply to sales of any Dietary
6 Supplement Products any Settling Defendant already has manufactured, distributed or sold prior
7 to the Compliance Date, even if sale or use of such Dietary Supplement Products to California
8 consumers occur after the Compliance Date.

9 **8.3 Release of Plaintiffs**

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

14 **IX. RETENTION OF JURISDICTION**

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

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

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

21 **XI. ENFORCEMENT**

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

1 **XII. GOVERNING LAW**

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

7 **XIII. EXCHANGE IN COUNTERPARTS**

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

11 **XIV. NOTICES**

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

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

19
20 Laura J. Baughman, Esq.
21 Baron & Budd, P.C.
22 3102 Oak Lawn Avenue, Suite 1100
23 Dallas, TX 75219.

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

26 Susan L. Germaise, Esq.
27 McGuireWoods LLP
28 1800 Century Park East – 8th Floor
Los Angeles, CA 90067

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 of competent jurisdiction to be unenforceable, the validity
4 of the enforceable provisions remaining shall not be adversely affected.

5 **XVI. ENTIRE AGREEMENT**

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

12 **XVII. ASSIGNMENT**

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

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17 **APPROVED AS TO SUBSTANCE:**

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19 Dated: _____



General Nutrition Centers, Inc., including its direct
and indirect subsidiaries

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21 Dated: _____

Rite Aid Corporation, including its direct
and indirect subsidiaries

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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 of competent jurisdiction to be unenforceable, the validity
4 of the enforceable provisions remaining shall not be adversely affected.

5 **XVI. ENTIRE AGREEMENT**

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

12 **XVII. ASSIGNMENT**

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

16
17 **APPROVED AS TO SUBSTANCE:**

18
19 Dated: _____

General Nutrition Centers, Inc., including its direct
and indirect subsidiaries

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21 Dated: 6/12/13 _____

[Signature]
Rite Aid Corporation, including its direct
and indirect subsidiaries

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Dated: _____

Chris Manthey

Dated: _____

Benson Chiles

APPROVED AS TO FORM:

Dated: _____

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

By: _____
Laura Baughman
Attorneys for Plaintiffs

Dated: _____

McGuireWoods LLP

By: _____
Susan L. Germaise
Patricia L. Victory
Attorneys for Defendants General Nutrition
Centers, Inc. and Rite Aid Corporation

APPROVED AND ORDERED:

Dated: _____

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

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Dated: 5/23/13

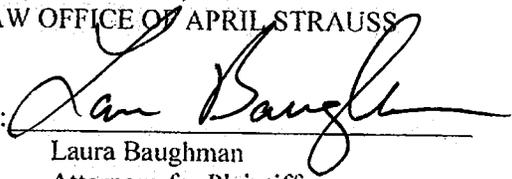

Chris Manthey

Dated: 5/22/13


Benson Chiles

APPROVED AS TO FORM:

Dated: 6/17/13

BARON & BUDD, P.C.
LAW OFFICE OF APRIL STRAUSS
By: 
Laura Baughman
Attorneys for Plaintiffs

Dated: _____

McGuireWoods LLP
By: _____
Susan L. Germaise
Patricia L. Victory
Attorneys for Defendants General Nutrition
Centers, Inc. and Rite Aid Corporation

APPROVED AND ORDERED:

Dated: _____

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

EXHIBIT A – “DIETARY SUPPLEMENT PRODUCTS”

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The Dietary Supplement Products shall be GNC Cholesterol Free Fish Body Oils With GLA, GNC Liquid Cod Liver Oil 16 FL OZ, GNC Cholesterol Free Fish Body Oils with GLA 1000 MG 180 Softgels, GNC Liquid Norwegian Cod Liver Oil 16 FL OZ, Rite Aid COD LIVER OIL MINT 12Z-ACTV, Rite Aid NAT COD LIVER OIL 250C-ACTV, Rite Aid NAT COD LIVER OIL 100C-ACTV and all other dietary supplements containing fish oils, fish, shark or cod liver oils, shark or squid oils, krill oil, algae oils, and other oils containing eicosapentaenoic acid (“EPA”) and / or docosahexaenoic acid (“DHA”) for human consumption containing the Proposition 65 listed chemical polychlorinated biphenyls (“PCBs”) which are manufactured by, for, or on behalf of, Settling Defendant GNC (for purposes of this Exhibit A only, “Defendant GNC” shall include its now or hereafter existing parent companies, corporate affiliates, and direct and indirect subsidiaries) and distributed or sold by or on behalf of a Settling Defendant, whether manufactured, distributed or sold prior to, or subsequent to entry of, this Consent Judgment.

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

EXHIBIT B—NOTICE LETTERS AND COMPLAINT

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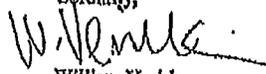
August 6, 2009

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

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

Greetings:

The Mateel Environmental Justice Foundation ("Mateel"), Chris Manthey and Benson Chiles give you notice that the private businesses listed on the attached Service List have been, are, will be and threaten to be in violation of Cal. Health & Safety Code §25249.6. Mateel, Mr. Manthey and Mr. Chiles are private enforcers of Proposition 65, all may be contacted at the below listed address and telephone number. I am a responsible individual at Mateel. The Notifying Parties are also represented by David Roe, Mr. Roe may be reached at Law Offices of David Roe, 1061 Walker Ave, Oakland, CA 94610, (510) 465-5860. The above referenced violations occur and have occurred when people ingest dietary supplements that are made wholly, or partly, from fish oil ("fish oil dietary supplements"). Some examples of these types of products are: cod liver oil, Omega-3 oils, supplements made from fish body oils, BPA 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,

Willara Verick

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

SERVICE LIST

<p>BOWARD G. WELLS DEPUTY ATTORNEY GENERAL OFFICE OF THE ATTORNEY GENERAL P.O. BOX 7050 OAKLAND, CA 94612</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUMBIA P.O. BOX 430 WILLOUGH, CA 95111</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTAGNY 210 CHURCH STREET P.O. BOX 1151 SALINAS, CA 95321</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MENDOCINO P.O. BOX 917 YREKA, CA 96097</p>	<p>KARL RUDOLPH FARBROT SOLANO, INC. 2100 BATHING AVENUE ROCKY HOLLOW, NY 11779</p>
<p>OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND 505 19TH ST 12TH FLOOR OAKLAND, CA 94612</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HUMBOLDT 125 3TH ST. EUREKA, CA 95501</p>	<p>COUNTY OF NAVAJO 931 PARKWAY MALL P.O. BOX 722 NAVAJO, CA 95319-0722</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SOLANO 600 UNION AVE FAIRFIELD, CA 94533</p>	<p>WILLIAM W. NICHOLSON, CEO TYPHON CORPORATION 634 BROADWAY 11TH FL NEW YORK, NY 10012</p>
<p>OFFICE OF THE CITY ATTORNEY CITY OF SAN FRANCISCO CITY HALL ROOM 206 400 VAN NESS SAN FRANCISCO, CA 94102</p>	<p>COUNTY OF IMPERIAL COURTHOUSE, FLOOR 4 918 W. MAIN ST EL CENTRO, CA 92541</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NEVADA 110 UNION STREET NEVADA CITY, CA 95959</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SONOMA 600 ADMINISTRATION DR. 212J SANTA ROSA, CA 95403</p>	
<p>OFFICE OF THE CITY ATTORNEY CITY OF SACRAMENTO PO BOX 1244 SACRAMENTO, CA 95812-1914</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE P.O. DRAWER D DORR POND, CA 95226</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ORANGE 401 COTO CENTER DR WEST SANTA ANA, CA 92701</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF STANISLAUS 1100 ST. JAMES MORRISTOWN, CA 95254</p>	
<p>OFFICE OF THE CITY ATTORNEY CITY OF SAN JOSE 200 EAST SANTA CLARA STREET SAN JOSE, CA 95113</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KERN 1215 TRUCKEE AVE. FLOOR 4 BAKERSFIELD, CA 93301</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLACER 11527 N AVENUE AYERSON, CA 95601-2497</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 1160 CIVIC CENTER BLVD, 2A YUBA CITY, CA 95993</p>	
<p>OFFICE OF THE CITY ATTORNEY CITY OF LOS ANGELES 260 N. MAIN ST LOS ANGELES, CA 90012</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KINGS 1400 W. LAGUNA BLVD. HAWTHORN, CA 93230</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLUMAS 110 MAIN STREET #101 QUINCY, CA 95717</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA P.O. BOX 210 ROD DUFFY, CA 96010</p>	
<p>OFFICE OF THE CITY ATTORNEY CITY OF SAN DIEGO CONSULERS & ENVIRONMENTAL PROTECTION 120 THIRD AVENUE SUITE 700 SAN DIEGO, CA 92101</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LAMAR 133 N. FORDS ST # 211 LAMPORTE, CA 92533</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF RIVERSIDE 4075 MAIN ST. RIVERSIDE, CA 92503</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA P.O. BOX 210 WHAVERVILLE, CA 95993</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALAMEDA 1245 FALLON STREET ROOM 200 OAKLAND, CA 94612</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SACRAMENTO 501 O STREET SACRAMENTO, CA 95814</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BENITO 419 4TH ST HOLLISTER, CA 95023</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 2 S. QUINCY ST. SONOMA, CA 95076</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AVAREHO P.O. BOX 218 MARKLESVILLE, CA 95320</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN FRANCISCO 1000 CRIMINAL COURTS BUILDING 310 W. TAYLOR ST. LOS ANGELES, CA 90012</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BERNARDINO 26511 17TH AVE. SAN BERNARDINO, CA 92415-0001</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 140 SOUTH VICTORIA AVE VENTURA, CA 93003</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMADOR 704 COURT STREET JACKSON, CA 95642</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MADRA 299 W. YOSEMITE AVE MADRA, CA 95657</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO 310 W. BROADWAY SAN DIEGO, CA 92101</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF VOLCO 201 SECOND STREET WOODLAND, CA 95793</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 25 COUNTY CENTER DR. OROVILLE, CA 95963</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA 210 S. YOSEMITE AVE MADRA, CA 95657</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN FRANCISCO 830 DRAYTON ST SAN FRANCISCO, CA 94101</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 213 3TH ST. HAWKESVILLE, CA 95901</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAVERAS GOVERNMENT CENTER 601 MOUNTAIN HANCOCK ROAD SAN ANDREAS, CA 95219</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA P.O. BOX 710 MARIPOSA, CA 95338</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 271 E. WEBER AVE #102 STOCKTON, CA 95202</p>	<p>THOMAS M. RYAN, CEO CIS PHARMACY, INC. ONE CENTER DRIVE WOOLSOCKET, RI 02893</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUSA 317 MARKET STREET COLUSA, CA 95921</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMERSONO PO BOX 1690 UKIAH, CA 95422</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 271 E. WEBER AVE #102 STOCKTON, CA 95202</p>	<p>THOMAS M. RYAN, CEO CIS PHARMACY, INC. ONE CENTER DRIVE WOOLSOCKET, RI 02893</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CONTRA COSTA P.O. BOX 610 MARTINEZ, CA 94531</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA 210 S. YOSEMITE AVE MADRA, CA 95657</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 271 E. WEBER AVE #102 STOCKTON, CA 95202</p>	<p>THOMAS M. RYAN, CEO CIS PHARMACY, INC. ONE CENTER DRIVE WOOLSOCKET, RI 02893</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE NORTH 401 1ST #111 CRESCENT CITY, CA 95521</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA 210 S. YOSEMITE AVE MADRA, CA 95657</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 271 E. WEBER AVE #102 STOCKTON, CA 95202</p>	<p>THOMAS M. RYAN, CEO CIS PHARMACY, INC. ONE CENTER DRIVE WOOLSOCKET, RI 02893</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAVERAS 315 MAIN ST. FLACKERVILLE, CA 95642</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA 210 S. YOSEMITE AVE MADRA, CA 95657</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 271 E. WEBER AVE #102 STOCKTON, CA 95202</p>	<p>THOMAS M. RYAN, CEO CIS PHARMACY, INC. ONE CENTER DRIVE WOOLSOCKET, RI 02893</p>	
<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF FRESNO 210 TULARE ST #100 FRESNO, CA 93711</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA 210 S. YOSEMITE AVE MADRA, CA 95657</p>	<p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 271 E. WEBER AVE #102 STOCKTON, CA 95202</p>	<p>THOMAS M. RYAN, CEO CIS PHARMACY, INC. ONE CENTER DRIVE WOOLSOCKET, RI 02893</p>	

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 FISH BODY OILS WITH GLA UPC CODE: 048107 073312; GNC LIQUID COD LIVER OIL 16 FL OZ UPC CODE: 049107 057657; GNC CHOLESTEROL 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.

PHARMAYTE 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.

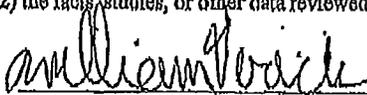
TWINLAB CORPORATION

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 notifying 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(b)(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

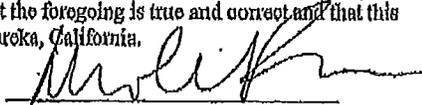

William Verick

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
Klamath Environmental Law Center
2 424 First Street
Eureka, CA 95501
3 Telephone: (707) 268-8900
Fax: (707) 268-8901
4 wverick@lga.org
ecorights@earthlink.net

5 DAVID ROE, CSB # 62552
6 Law Offices of David Roe
1061 Walker Ave
7 Oakland, CA 94610
8 Telephone: (510) 465-5860
daavldroe@gmail.com

9 Attorneys for Plaintiffs,
10 CHRIS MANTHEY, BENSON CHILES and MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 (Unlimited Jurisdiction)

14 CHRIS MANTHEY, BENSON CHILES and
15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,

CASE NO

CGC-10-497334

17 Plaintiffs,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 v.

19
20 CVS PHARMACY, INC.; GENERAL
NUTRITION CORPORATION; NOW HEALTH
21 GROUP, INC.; OMEGA PROTEIN, INC.;
22 PEARMAYTE LLC; RITE AID
CORPORATION; SOLGAR, INC.; and
23 TWINLAB CORPORATION

TOXIC TORT/ENVIRONMENTAL

24 Defendants,

25
26
27 CHRIS MANTHEY, BENSON CHILES and MATEEL ENVIRONMENTAL JUSTICE
28

COMPLAINT FOR INJUNCTION
AND CIVIL PENALTIES

ENDORSED
FILED
San Francisco County Superior Court
MAR 02 2010
CLERK OF THE COURT
BY: DEBORAH STEFF
Deputy Clerk

CASBMANA...CONFERENCE SET

JUL 30 2010 10:00 AM

DEPARTMENT 212

1 FOUNDATION alleged as follows:

2 INTRODUCTION

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

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17
18 2. Defendants are businesses that manufacture, market, and/or distribute fish oil
19 supplements. Defendants intend that residents of California ingest fish oil supplements that
20 Defendants manufacture, market, and/or distribute. When these products are ingested in their
21 normally intended manner, they expose people to PCBs. In spite of knowing that residents of
22 California were and are being exposed to PCBs when they ingest Defendants' fish oil
23 supplements, Defendants did not and do not provide clear and reasonable warnings that these
24 products cause exposure to chemicals known to cause cancer, birth defects and other
25 reproductive harm. The fish oil supplements to which this Complaint pertains are those
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27
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1 referenced in the Products List that accompanied the 60 Day Notice Letter, which is appended to
2 and incorporated by reference in this Complaint.

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

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

20 5. Plaintiffs Christopher Manthey and Benson Chiles are individuals concerned
21 about human health and environmental protection. Plaintiff MATEEL ENVIRONMENTAL
22 JUSTICE FOUNDATION ("Mateel") is a non-profit corporation dedicated to, among other
23 causes, the protection of the environment, promotion of human health, environmental education,
24 and consumer rights. Mateel is based in Eureka, California, and is incorporated under the laws of
25 the State of California. All plaintiffs are "persons" pursuant to Health & Safety Code Section
26 25118. Plaintiffs bring this enforcement action in the public interest pursuant to Health & Safety
27
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1 Code §25249.7(d). Residents of California are regularly exposed to PCBs from fish oil
2 supplements manufactured, distributed or marketed by Defendants and are intentionally so
3 exposed without a clear and reasonable Proposition 65 warning.
4

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

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

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

3
4 JURISDICTION

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

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

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

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

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

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

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

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

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

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

21
22 17. By the above described acts, Defendants have violated Cal. Health & Safety Code
23 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition
24 65, to provide warnings to all present and future customers, and to provide warnings to their past
25 customers who purchased Defendants' products without receiving a clear and reasonable
26 warning.
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SECOND CAUSE OF ACTION
(Claim for Civil Penalties)

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

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

PRAYER FOR RELIEF

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

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

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

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

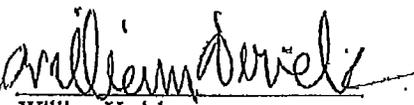
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D. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to Plaintiffs the attorneys fees and costs it incurred in bringing this enforcement action.

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

Dated: February 24, 2010

KLAMATH ENVIRONMENTAL LAW CENTER

By 
William Verlok
Attorney for Plaintiffs Christopher Manthey,
Benson Chiles and the Mateel Environmental Justice
Foundation

800.222.2766 3102 Oak Lawn Avenue
tel 214.521.3605 Suite 1100
fax 214.520.1181 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:

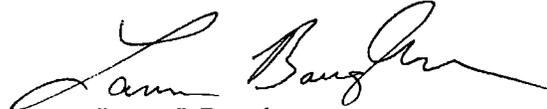
Laura Baughman
Baron & Budd, P.C.
3102 Oak Lawn Ave., Suite 1100
Dallas, Texas 75219
(214) 521-3605.



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



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.

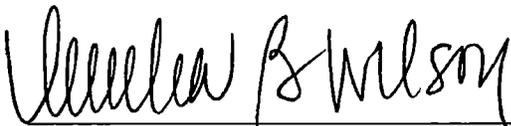
On August 5, 2011 I served the following document(s):

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
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney of Colusa County
547 Market Street
Colusa, CA 95932

District Attorney of Contra Costa County
725 Court Street, Room 402
Martinez, CA 94553

District Attorney of El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney of Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721

District Attorney of Glenn County
P.O. Box 430
Willows, CA 95988

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

District Attorney of Imperial County
939 Main Street
El Centro, CA 92243

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

District Attorney of Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney of Del Norte County
450 H Street, Ste 171
Crescent City, CA 95531

District Attorney of Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney of Lassen County
220 S. Lassen St., Ste 8
Susanville, CA 96130

District Attorney of Los Angeles County
210 W. Temple Street, Room 345
Los Angeles, CA 90012

District Attorney of Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney of Marin County
3501 Civic Center Dr., Room 183
San Rafael, CA 94903

District Attorney of Mariposa County
P.O. Box 730
Mariposa, CA 95338

District Attorney of Mendocino County
P.O. Box 1000
Ukiah, CA 95482

District Attorney of Merced County
2222 "M" Street
Merced, CA 95340

District Attorney of Modoc County
204 S Court Street
Alturas, CA 96101-4020

District Attorney of Mono County
P.O. Box 617
Bridgeport, CA 93517

District Attorney of Monterey County
PO Box 1131
Salinas, CA 93901

District Attorney of San Joaquin County
P.O. Box 990
Stockton, CA 95201

District Attorney of Kings County
1400 West Lacey
Hanford, CA 93230

District Attorney of Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney of Nevada County
110 Union Street
Nevada City, CA 95959

District Attorney of Orange County
401 Civic Ctr Drive West
Santa Ana, CA 92701

District Attorney of Placer County
10810 Justice Center Drive Suite #240
Roseville, CA 95678

District Attorney of Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney of Riverside County
3960 Orange Street, Ste 5
Riverside, CA 92501

District Attorney of Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney of San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney of San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney of San Diego County
330 West Broadway, Suite 1320
San Diego, CA 92112

District Attorney of San Francisco County
850 Bryant Street, Rm 325
San Francisco, CA 94103

District Attorney of Stanislaus County
800 11th Street, Room 200
Modesto, CA 95353

District Attorney of San Luis Obispo County
1050 Monterey St, Room 450
San Luis Obispo, CA 93408

District Attorney of San Mateo County
400 County Ctr, 3rd Fl
Redwood City, CA 94063

District Attorney of Santa Barbara County
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney of Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney of Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95061

District Attorney of Sierra County
Courthouse, P.O. Box 457
Downieville, CA 95936

District Attorney of Siskiyou County
P.O. Box 986
Yreka, CA 96097

District Attorney of Solano County
600 Union Avenue
Fairfield, CA 94533

District Attorney of Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney of Shasta County
1355 West Street
Redding, CA 96001_1652

District Attorney of Tehama County
P.O. Box 519
Red Bluff, CA 96080

District Attorney of Trinity County
P.O. Box 1310
Weaverville, CA 96093

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney of Tulare County
221 S. Mooney Ave, Room 224
Visalia, CA 93291

District Attorney of Tuolumne County
2 South Green
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 3102 Oak Lawn Avenue
tel 214.521.3605 Suite 1100
fax 214.520.1181 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



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.

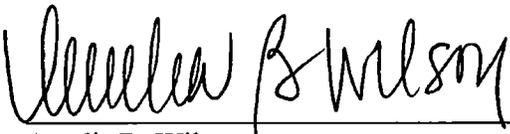
On February 1, 2012, I served the following document(s):

**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

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Bohemia, NY 11716

Current CEO or President
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Fresno, CA 93721

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District Attorney of Kings County
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District Attorney of Lake County
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Nevada City, CA 95959

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San Diego, CA 92101

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Modesto, CA 95353

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

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

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

District Attorney of Tehama County
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8 Attorneys for Plaintiffs,
9 CHRIS MANTHEY and BENSON CHILES

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 (Unlimited Jurisdiction)

14 CHRIS MANTHEY and BENSON CHILES,

15
16 Plaintiffs,

17 v.

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

22 Defendants.

Case No.: CGC-10-497334

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

ELECTRONICALLY

FILED

*Superior Court of California,
County of San Francisco*

DEC 11 2012

Clerk of the Court

BY: ANNIE PASCUAL

Deputy Clerk

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.

25
26
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 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
28

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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SECOND CAUSE OF ACTION
(Claim for Civil Penalties)

18. Plaintiffs reallege and incorporate by reference into this Second Cause of Action, as if specifically set forth herein, paragraphs 1 through 17, inclusive.

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

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment against DEFENDANTS, as follows:

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

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

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

D. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to Plaintiffs the attorney's fees and costs they incurred in bringing this enforcement action.

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

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Dated: Dec. 10, 2012

Respectfully submitted,

BARON & BUDD, P.C.

By: 

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14 Attorneys for Plaintiffs
15 CHRIS MANTHEY AND BENSON CHILES

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

18 CHRIS MANTHEY; BENSON CHILES; and
19 MATEEL ENVIRONMENTAL JUSTICE
20 FOUNDATION,

21 Plaintiffs,

22 v.

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

Defendants.

ELECTRONICALLY

FILED

*Superior Court of California,
County of San Francisco*

DEC 11 2012

Clerk of the Court

BY: ANNIE PASCUAL

Deputy Clerk

Case No. CGC-10-497334

PROOF OF SERVICE

1 **PROOF OF SERVICE**

2 I hereby certify that I am an employee of Baron & Budd, P.C. in the County of Dallas,
3 State of Texas. I am over the age of 18 years and not a party to the within action; my business
4 address is 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281. On December 10,
5 2012, I served a copy of the attached document titled:

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

8 on the parties listed below, as noted:

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

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

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

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20 Law Offices of Andrew L. Packard
21 100 Petaluma Boulevard N, Suite 301
22 Petaluma, CA 94952
23 Telephone: (707) 763-7727
24 FAX: (707) 763-9227
25 Andrew@packardlawoffices.com

26 Attorney for Plaintiffs
27 MATEEL ENVIRONMENTAL JUSTICE
28 FOUNDATION

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Attorneys for Defendant
GENERAL NUTRITION CENTERS, INC.,
sued erroneously herein as GENERAL
NUTRITION CORPORATION

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Attorney for Plaintiffs
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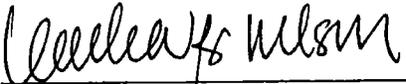
Attorneys for the PEOPLE OF THE
STATE OF CALIFORNIA

David Roe
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Oakland, CA 94610

Attorney for Plaintiffs
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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

Dated: December 10, 2012



Amelia B. Wilson
Legal Secretary to Laura J. Baughman