

1 **Judith Praitis (SBN 151303)**
jpraitis@sidley.com
2 **Amy P. Lally (SBN 198555)**
alally@sidley.com
3 **SIDLEY AUSTIN LLP**
555 West Fifth Street
4 **Los Angeles, California 90013-1010**
Telephone: (213) 896-6000
5 Facsimile: (213) 896-6600

6 **Attorneys for Defendants**
Market America, Inc. and Market America World-Wide, Inc.

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

10
11 ENVIRONMENTAL RESEARCH CENTER,
a California non-profit corporation,

12
13 Plaintiff,

14 v.

15 MARKET AMERICA, INC. and MARKET
AMERICA WORLD-WIDE, INC.,
16 corporations, and DOES 1-25

17 Defendants.

Case No. 30-2013-00650458-CU-MC-CHC

**MARKET AMERICA, INC., MARKET-
AMERICA WORLD-WIDE, INC. OFFER
TO COMPROMISE PURSUANT TO C.C.P.
SECTION 998 TO PLAINTIFF
ENVIRONMENTAL RESEARCH CENTER**

Complaint Filed: May 20, 2012
Trial Date: July 28, 2014

Judge: The Hon. Sheila Fell
Dept. C-22

18
19 TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

20 Pursuant to California Code of Civil Procedure sec. 998, defendants Market America,
21 Inc. and Market America World-Wide, Inc. ("**Defendants**") hereby tender the following offer of
22 compromise and settlement (the "**Offer**") in the above-captioned action (the "**Action**") to
23 Environmental Research Center ("**Plaintiff**");

24 (1) Defendants shall pay to Plaintiff the sum of \$75,000.00 in full and complete
25 satisfaction of any and all claims for damages, restitution, costs, expenses, attorney's fees, penalties
26 and any and all other money relief sought in the Action.

27 (2) Defendants will provide the following warning prior to California consumer
28 exposures - "**WARNING**: This product contains a chemical known to the State of California to

1 cause birth defects or other reproductive harm.” - for the following products under the following
2 circumstances: (a) TLS Weight Loss Protein Shake/Chocolate, (b) MochaTonix Chocolate Mocha
3 Flavor and (c) Advanced Level 90 Blood Sugar if lead in any product exceeds 0.5 micrograms per
4 recommended daily serving, *excluding* the following amounts of lead which are naturally occurring
5 for purposes of the resolution of this Action:

6 (1) 0.8 micrograms per gram (“**mcg/gram**”) in elemental calcium, up to a maximum
7 exclusion of 1.2 mcg if there is 1500 milligrams or more of elemental calcium per recommended
8 serving;

9 (2) 0.4 mcg/gram in Ferrous Fumarate;

10 (3) 8.0 mcg/gram in zinc oxide;

11 (4) 0.4 mcg/gram in magnesium oxide;

12 (5) 0.332 mcg/gram in magnesium carbonate;

13 (6) 0.4 mcg/gram in magnesium hydroxide;

14 (7) 0.8 mcg/gram in zinc gluconate;

15 (8) 1.1 mcg/gram in potassium chloride;

16 (9) 1.0 mcg/gram in cocoa powder, 1.0 mcg/gram chocolate liquor and 0.1 mcg/gram
17 cocoa butter.

18 (3) Upon acceptance by Plaintiff, this Offer resolves Plaintiff’s claims in the
19 Action in their entirety, in exchange for which Plaintiff will dismiss all of Plaintiff’s claims against
20 all Defendants in this case, with prejudice, and Plaintiff releases all Defendants and Defendants’
21 parents, affiliates, subsidiaries, past and present officers, shareholders, officials, trustees, members,
22 directors, partners, agents, employees, insurers, attorneys, manufacturers, distributors, retailers,
23 sellers, customers, wholesalers and their successors or assigns, and each of them, as to those matters
24 dismissed.

25 (4) Defendant releases any and all claims against Plaintiff, its attorneys and other
26 representatives, for any and all actions taken or statements made by Plaintiff and its attorneys and
27 other representatives in connection with this Action, up through the date this Offer is accepted by
28 Plaintiff, whether in the course of investigating claims or otherwise in prosecuting this Action.

1 (5) This Offer shall remain open for acceptance by Plaintiff for thirty (30) days
2 from the date of service hereof, and if not accepted within that time frame, or by commencement of
3 trial, whichever occurs first, it shall be deemed withdrawn and cannot be given in evidence upon the
4 trial. Plaintiff may accept this offer by having its counsel sign and return it to Defendants' counsel.
5 See Code of Civil Procedure sec. 998(b). Because the stated sums in this Offer are inclusive of any
6 and all money terms, including attorney's fees and costs incurred up to the date of this Offer,
7 Plaintiff's acceptance of this Offer constitutes an agreement that each party will bear its own costs
8 and fees, including attorney's fees, except as set forth herein in paragraph (1).

9 (6) WARNING: Failure to accept this Offer can result in Plaintiff being unable to
10 recover costs of suit or attorney's fees in this Action incurred after this Offer. Failure to accept this
11 Offer can also result in Plaintiff being ordered to pay Defendants' costs incurred after this Offer,
12 may include Defendants' reasonable expert witness fees for case preparation and trial testimony, and
13 may include, if the statutory factors are met, Defendants' attorney's fees. See California Code of
14 Civil Procedure sec. 998(c), (e).

15 (7) The Action alleges claims under The Safe Drinking Water and Toxic
16 Enforcement Act of 1986, California Health & Safety Code Sections 25249.5 *et seq.* ("Proposition
17 65") and upon acceptance Plaintiff agrees to fulfill its obligations under Proposition 65 to timely
18 notify the Office of the Attorney General of this Offer and in due course to file a motion seeking
19 judicial approval of this Offer, all in accordance with California Health & Safety Code Section
20 25249.7(f).

21 //

22 //

23 //

24 //

1 Dated: June 25, 2014 at 4 pm.

2 SIDLEY AUSTIN LLP

3
4
5 By: 

Judith M. Praitis
Amy P. Lally

6
7 Attorneys for Defendants
Market America, Inc. and Market America
8 World-Wide, Inc.

9
10 **THE SETTLEMENT OFFER ABOVE IS AGREED TO AND ACCEPTED BY PLAINTIFF:**

11
12 By: 

13 William F. Wraith
Attorneys for Environmental Research Center

14 DATED: 6/25, 2014