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8  
9 Names of Additional Counsel Appear on Following  
Page

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12  
13 **THE PEOPLE OF THE STATE OF  
CALIFORNIA**

14 Plaintiff,

15 v.

16 **21ST CENTURY HEALTHCARE, INC.,  
17 APEX FITNESS GROUP, A DIVISION OF  
24 HOUR FITNESS USA, INC., BIOSAN  
18 LABORATORIES, INC., BLUEBONNET  
NUTRITION CORPORATION, BRONSON  
19 NUTRITIONALS, LLC, BURIED  
TREASURE, A DIVISION OF LIFE LINE  
20 FOOD INC., D&E PHARMACEUTICALS,  
INC., DAVINCI LABORATORIES OF  
21 VERMONT, NATROL, INC., DESIGNS  
FOR HEALTH, INC., DOUGLAS  
22 LABORATORIES, DYNAMIC HEALTH  
LABORATORIES, INC., ENZYMATIC  
23 THERAPY, INC., FAIRHAVEN HEALTH,  
LLC, FOODSCIENCE CORPORATION,  
24 FOODSCIENCE OF VERMONT,  
FUTUREBIOTICS, LLC, GENSPEC LABS,  
25 LLC, HEALTH AUTHORITY, LLC,  
INTEGRATIVE THERAPEUTICS, INC.,  
26 IRWIN NATURALS, J.R. CARLSON  
LABORATORIES, INC., KIRKMAN,  
27 KORDIAL NUTRIENTS, METABOLIC  
MAINTENANCE PRODUCTS, INC.,**

RG08426937

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTY AND INJUNCTIVE  
RELIEF**

**Assigned for all purposes to the Honorable  
Robert Freedman**

**Dept.: 20**

**Complaint Filed: December 23, 2008**

**Trial Date: None Set**

1 EDMUND G. BROWN JR.  
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2 EDWARD G. WEIL  
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16 v.

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APEX FITNESS GROUP, A DIVISION OF  
24 HOUR FITNESS USA, INC., BIOSAN  
18 LABORATORIES, INC., BLUEBONNET  
NUTRITION CORPORATION, BRONSON  
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TREASURE, A DIVISION OF LIFE LINE  
20 FOOD INC., D&E PHARMACEUTICALS,  
INC., DAVINCI LABORATORIES OF  
21 VERMONT, NATROL, INC., DESIGNS  
FOR HEALTH, INC., DOUGLAS  
22 LABORATORIES, DYNAMIC HEALTH  
LABORATORIES, INC., ENZYMATIC  
23 THERAPY, INC., FAIRHAVEN HEALTH,  
LLC, FOODSCIENCE CORPORATION,  
24 FOODSCIENCE OF VERMONT,  
FUTUREBIOTICS, LLC, GENSPEC LABS,  
25 LLC, HEALTH AUTHORITY, LLC,  
INTEGRATIVE THERAPEUTICS, INC.,  
26 IRWIN NATURALS, J.R. CARLSON  
LABORATORIES, INC., KIRKMAN,  
27 KORDIAL NUTRIENTS, METABOLIC  
MAINTENANCE PRODUCTS, INC.,**

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTY AND INJUNCTIVE  
RELIEF**

1 METAGENICS, INC., MOUNTAIN  
2 NATURALS OF VERMONT, NATURAL  
3 ORGANICS, INC., NATURE'S SECRET,  
4 NATURE'S WAY PRODUCTS, INC., NBTY  
5 MANUFACTURING, LLC, NEW  
6 CHAPTER, INC., NEXGEN PHARMA,  
7 INC., NF FORMULAS, INC., NOW FOODS,  
8 NUTRITION RESOURCE, INC.,  
9 NUTRITIONAL SPECIALTIES, INC.,  
10 NUTRI-WEST, OLYMPIAN LABS, INC.,  
11 RANDAL OPTIMAL NUTRIENTS, INC.  
12 PIONEER NUTRITIONAL FORMULAS,  
13 INC., PURE ESSENCE LABORATORIES,  
14 INC., RAINBOW LIGHT NUTRITIONAL  
15 SYSTEMS, INC., SOLGAR, INC.,  
16 SUPERNUTRITION LIFE-EXTENSION  
17 RESEARCH, INC., THE DAILY  
18 WELLNESS COMPANY, THE VITAMIN  
19 SHOPPE INDUSTRIES, INC.,  
20 THRESHOLD ENTERPRISES, LTD.,  
21 UNIVERSAL NUTRITION, WYETH,  
22 WAL-MART STORES, INC. DOES 1  
23 THROUGH 500,

24  
25  
26  
27  
28  
Defendants.

1 (List of Counsel continued from first page)

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1 Plaintiff, the People of the State of California, ex. rel Edmund G. Brown Jr., Attorney  
2 General, Thomas Orloff, District Attorney for the County of Alameda, Edward S. Berberian,  
3 District Attorney for the County of Marin, Dean D. Flippo, District Attorney for the County of  
4 Monterey, Gary Lieberstein, District Attorney for the County of Napa, Tony Rackauckas, District  
5 Attorney for the County of Orange, Bob Lee, District Attorney for the County of Santa Cruz,  
6 Gerald C. Benito, District Attorney for the County of Shasta, David W. Paulson, District Attorney  
7 for the County of Solano, and Stephan R. Passalacqua, District Attorney for the County of  
8 Sonoma, hereby alleges:

9 **I. PRELIMINARY STATEMENT**

10 1. This complaint seeks to remedy the failure of defendants to warn persons of exposure  
11 to lead, which is a chemical known to the State of California to cause birth defects, or other  
12 reproductive harm, and cancer. Under the Safe Drinking Water and Toxic Enforcement Act of  
13 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must  
14 provide persons with a "clear and reasonable warning" before exposing individuals to chemicals  
15 known to the state to cause cancer or reproductive harm. In this case, exposure to lead occurs  
16 when individuals ingest vitamin supplements that contain lead. "Vitamin Supplements" are  
17 products sold for the purpose of supplementing the intake of various vitamins, minerals, and  
18 nutrients over and above that obtained from food.

19 **II. PARTIES**

20 2. Plaintiff is the People of the State of California, ex. rel Edmund G. Brown Jr.,  
21 Attorney General, Thomas Orloff, District Attorney for the County of Alameda, Edward S.  
22 Berberian, District Attorney for the County of Marin, Dean D. Flippo, District Attorney for the  
23 County of Monterey, Gary Lieberstein, District Attorney for the County of Napa, Tony  
24 Rackauckas, District Attorney for the County of Orange, Bob Lee, District Attorney for the  
25 County of Santa Cruz, Gerald C. Benito, District Attorney for the County of Shasta, David W.  
26 Paulson, District Attorney for the County of Solano, and Stephan R. Passalacqua, District  
27 Attorney for the County of Sonoma. Health and Safety Code section 25249.7, subdivision (c)  
28 provides that actions to enforce Proposition 65 may be brought by the Attorney General or a

1 District Attorney in the name of the People of the State of California. Business and Professions  
2 Code sections 17200 et seq. provide that actions to enforce that statute may be brought by the  
3 Attorney General in the name of the People of the State of California, or by a District Attorney.

4 3. Defendant 21st CENTURY HEALTHCARE, INC. is a business entity that sells, or  
5 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements  
6 that contain lead within the State of California, or made vitamin supplements available for sale in  
7 California, without first giving clear and reasonable warning.

8 4. Defendant APEX FITNESS GROUP, A DIVISION OF 24 HOUR FITNESS USA,  
9 INC. is a business entity that sells, or has, at times relevant to this complaint, manufactured,  
10 distributed, or sold vitamin supplements that contain lead within the State of California, or made  
11 vitamin supplements available for sale in California, without first giving clear and reasonable  
12 warning.

13 5. Defendant BIOSAN LABORATORIES, INC., which does business as INNATE  
14 RESPONSE, INC., and MEGAFOOD, INC., is a business entity that sells, or has, at times  
15 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
16 lead within the State of California, or made vitamin supplements available for sale in California,  
17 without first giving clear and reasonable warning.

18 6. Defendant BLUEBONNET NUTRITION CORPORATION is a business entity that  
19 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin  
20 supplements that contain lead within the State of California, or made vitamin supplements  
21 available for sale in California, without first giving clear and reasonable warning.

22 7. Defendant BRONSON NUTRITIONALS, LLC, which does business as BRONSON  
23 LABORATORIES is a business entity that sells, or has, at times relevant to this complaint,  
24 manufactured, distributed, or sold vitamin supplements that contain lead within the State of  
25 California, or made vitamin supplements available for sale in California, without first giving clear  
26 and reasonable warning.

27 8. Defendant BURIED TREASURE, A DIVISION OF LIFE LINE FOOD INC., is a  
28 business entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or

1 sold vitamin supplements that contain lead within the State of California, or made vitamin  
2 supplements available for sale in California, without first giving clear and reasonable warning.

3  
4 9. Defendant D&E PHARMACEUTICALS, INC. is a business entity that sells, or has,  
5 at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that  
6 contain lead within the State of California, or made vitamin supplements available for sale in  
7 California, without first giving clear and reasonable warning.

8 10. Defendant DAVINCI LABORATORIES OF VERMONT (a subsidiary of  
9 FOODSCIENCE CORP.), is a business entity that sells, or has, at times relevant to this  
10 complaint, manufactured, distributed, or sold vitamin supplements that contain lead within the  
11 State of California, or made vitamin supplements available for sale in California, without first  
12 giving clear and reasonable warning.

13 11. Defendant NATROL, INC., doing business as DELAWARE NATROL, INC. is a  
14 business entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or  
15 sold vitamin supplements that contain lead within the State of California, or made vitamin  
16 supplements available for sale in California, without first giving clear and reasonable warning.

17 12. Defendant DESIGNS FOR HEALTH, INC. is a business entity that sells, or has, at  
18 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that  
19 contain lead within the State of California, or made vitamin supplements available for sale in  
20 California, without first giving clear and reasonable warning.

21 13. Defendant DOUGLAS LABORATORIES is a business entity that sells, or has, at  
22 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that  
23 contain lead within the State of California, or made vitamin supplements available for sale in  
24 California, without first giving clear and reasonable warning.

25 14. Defendant DYNAMIC HEALTH LABORATORIES, INC. is a business entity that  
26 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin  
27 supplements that contain lead within the State of California, or made vitamin supplements  
28 available for sale in California, without first giving clear and reasonable warning.

1           15. Defendant ENZYMATIC THERAPY, INC., including its division  
2 PHYTOPHARMICA, is a business entity that sells, or has, at times relevant to this complaint,  
3 manufactured, distributed, or sold vitamin supplements that contain lead within the State of  
4 California, or made vitamin supplements available for sale in California, without first giving clear  
5 and reasonable warning.

6           16. Defendant FAIRHAVEN HEALTH, LLC is a business entity that sells, or has, at  
7 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that  
8 contain lead within the State of California, or made vitamin supplements available for sale in  
9 California, without first giving clear and reasonable warning.

10           17. Defendant FOODSCIENCE CORPORATION is a business entity that sells, or has, at  
11 times relevant to this complaint, manufactured, distributed, or sold, vitamin supplements that  
12 contain lead within the State of California, or made vitamin supplements available for sale in  
13 California, without first giving clear and reasonable warning.

14           18. Defendant FOODSCIENCE OF VERMONT (a subsidiary of FOODSCIENCE  
15 CORP.), is a business entity that sells, or has, at times relevant to this complaint, manufactured,  
16 distributed, or sold vitamin supplements that contain lead within the State of California, or made  
17 vitamin supplements available for sale in California, without first giving clear and reasonable  
18 warning.

19           19. Defendant FUTUREBIOTICS, LLC is a business entity that sells, or has, at times  
20 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
21 lead within the State of California, or made vitamin supplements available for sale in California,  
22 without first giving clear and reasonable warning.

23           20. Defendant GENSPEC LABS, LLC is a business entity that sells, or has, at times  
24 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
25 lead within the State of California, or made vitamin supplements available for sale in California,  
26 without first giving clear and reasonable warning.

27           21. Defendant HEALTH AUTHORITY, LLC, doing business as DOCTOR'S TRUST  
28 VITAMINS, is a business entity that sells, or has, at times relevant to this complaint,

1 manufactured, distributed, or sold vitamin supplements that contain lead within the State of  
2 California, or made vitamin supplements available for sale in California, without first giving clear  
3 and reasonable warning.

4 22. Defendant INTEGRATIVE THERAPEUTICS, INC. is a business entity that sells, or  
5 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements  
6 that contain lead within the State of California, or made vitamin supplements available for sale in  
7 California, without first giving clear and reasonable warning.

8 23. Defendant IRWIN NATURALS is a business entity that sells, or has, at times  
9 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
10 lead within the State of California, or made vitamin supplements available for sale in California,  
11 without first giving clear and reasonable warning.

12 24. Defendant J.R. CARLSON LABORATORIES, INC. is a business entity that sells, or  
13 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements  
14 that contain lead within the State of California, or made vitamin supplements available for sale in  
15 California, without first giving clear and reasonable warning.

16 25. Defendant KIRKMAN is a business entity that sells, or has, at times relevant to this  
17 complaint, manufactured, distributed, or sold vitamin supplements that contain lead within the  
18 State of California, or made vitamin supplements available for sale in California, without first  
19 giving clear and reasonable warning.

20 26. Defendant KORDIAL NUTRIENTS is a business entity that sells, or has, at times  
21 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
22 lead within the State of California, or made vitamin supplements available for sale in California,  
23 without first giving clear and reasonable warning.

24 27. Defendant METABOLIC MAINTENANCE PRODUCTS, INC. is a business entity  
25 that sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin  
26 supplements that contain lead within the State of California, or made vitamin supplements  
27 available for sale in California, without first giving clear and reasonable warning.

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1           28. Defendant METAGENICS, INC. is a business entity that sells, or has, at times  
2 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
3 lead within the State of California, or made vitamin supplements available for sale in California,  
4 without first giving clear and reasonable warning.

5           29. Defendant MOUNTAIN NATURALS OF VERMONT (a subsidiary of  
6 FOODSCIENCE CORP.) is a business entity that sells, or has, at times relevant to this complaint,  
7 manufactured, distributed, or sold vitamin supplements that contain lead within the State of  
8 California, or made vitamin supplements available for sale in California, without first giving clear  
9 and reasonable warning.

10           30. Defendant NATURAL ORGANICS, INC. is a business entity that sells, or has, at  
11 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that  
12 contain lead within the State of California, or made vitamin supplements available for sale in  
13 California, without first giving clear and reasonable warning.

14           31. Defendant NATURE'S SECRET is a business entity that sells, or has, at times  
15 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
16 lead within the State of California, or made vitamin supplements available for sale in California,  
17 without first giving clear and reasonable warning.

18           32. Defendant NATURE'S WAY PRODUCTS, INC. is a business entity that sells, or  
19 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements  
20 that contain lead within the State of California, or made vitamin supplements available for sale in  
21 California, without first giving clear and reasonable warning.

22           33. Defendant NBTY MANUFACTURING, LLC is a business entity that, through  
23 control and direction of its subsidiaries, which include but are not limited to AMERICAN  
24 HEALTH, INC., GOOD 'N NATURAL, NATURE'S BOUNTY, PURITAN'S PRIDE,  
25 SUNDOWN, VITAMIN WORLD ONLINE, INC., and SOLGAR, INC., sells, or has, at times  
26 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
27 lead within the State of California, or made vitamin supplements available for sale in California,  
28 without first giving clear and reasonable warning. Plaintiff is informed and believes, and based

1 on such information and belief alleges, that NBTY, INC., exercises sufficient control over the  
2 operations and activities of its identified subsidiaries that it is responsible for the actions of the  
3 subsidiaries, and that it has itself caused exposures in the course of doing business under Health  
4 & Safety Code section 25249.6.

5 34. Defendant NEW CHAPTER, INC. is a business entity that sells, or has, at times  
6 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
7 lead within the State of California, or made vitamin supplements available for sale in California,  
8 without first giving clear and reasonable warning, including but not limited to products sold under  
9 the name Newmark.

10 35. Defendant NEXGEN PHARMA, INC., including but not limited to activities  
11 undertaken through its VITAMER LABORATORIES division, is a business entity that sells, or  
12 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements  
13 that contain lead within the State of California, or made vitamin supplements available for sale in  
14 California, without first giving clear and reasonable warning.

15 36. Defendant NF FORMULAS, INC. is a business entity that sells, or has, at times  
16 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
17 lead within the State of California, or made vitamin supplements available for sale in California,  
18 without first giving clear and reasonable warning.

19 37. Defendant NOW FOODS is a business entity that sells, or has, at times relevant to  
20 this complaint, manufactured, distributed, or sold vitamin supplements that contain lead within  
21 the State of California, or made vitamin supplements available for sale in California, without first  
22 giving clear and reasonable warning.

23 38. Defendant NUTRITION RESOURCE, INC., doing business as NUTRIBIOTIC is a  
24 business entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or  
25 sold vitamin supplements that contain lead within the State of California, or made vitamin  
26 supplements available for sale in California, without first giving clear and reasonable warning.

27 39. Defendant NUTRITIONAL SPECIALTIES, INC. is a business entity that sells, or  
28 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements

1 that contain lead within the State of California, or made vitamin supplements available for sale in  
2 California, without first giving clear and reasonable warning.

3 40. Defendant NUTRI-WEST is a business entity that sells, or has, at times relevant to  
4 this complaint, manufactured, distributed, or sold vitamin supplements that contain lead within  
5 the State of California, or made vitamin supplements available for sale in California, without first  
6 giving clear and reasonable warning.

7 41. Defendant OLYMPIAN LABS, INC. is a business entity that sells, or has, at times  
8 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
9 lead within the State of California, or made vitamin supplements available for sale in California,  
10 without first giving clear and reasonable warning.

11  
12 42. Defendant RANDAL OPTIMAL NUTRIENTS, INC., is a business entity that sells,  
13 or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements  
14 that contain lead within the State of California, or made vitamin supplements available for sale in  
15 California, without first giving clear and reasonable warning.

16 43. Defendant PIONEER NUTRITIONAL FORMULAS, INC. is a business entity that  
17 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin  
18 supplements that contain lead within the State of California, or made vitamin supplements  
19 available for sale in California, without first giving clear and reasonable warning.

20 44. Defendant PURE ESSENCE LABORATORIES, INC. is a business entity that sells,  
21 or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements  
22 that contain lead within the State of California, or made vitamin supplements available for sale in  
23 California, without first giving clear and reasonable warning.

24 45. Defendant RAINBOW LIGHT NUTRITIONAL SYSTEMS, INC. is a business entity  
25 that sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin  
26 supplements that contain lead within the State of California, or made vitamin supplements  
27 available for sale in California, without first giving clear and reasonable warning.

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1           46. Defendant SOLGAR, INC., (a subsidiary of NBTY, Inc.), is a business entity that  
2 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin  
3 supplements that contain lead within the State of California, or made vitamin supplements  
4 available for sale in California, without first giving clear and reasonable warning.

5  
6           47. Defendant SUPERNUTRITION LIFE-EXTENSION RESEARCH, INC. is a business  
7 entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or sold  
8 vitamin supplements that contain lead within the State of California, or made vitamin  
9 supplements available for sale in California, without first giving clear and reasonable warning.

10           48. Defendant THE DAILY WELLNESS COMPANY is a business entity that sells, or  
11 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements  
12 that contain lead within the State of California, or made vitamin supplements available for sale in  
13 California, without first giving clear and reasonable warning.

14           49. Defendant THE VITAMIN SHOPPE INDUSTRIES, INC. is a business entity that  
15 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin  
16 supplements that contain lead within the State of California, or made vitamin supplements  
17 available for sale in California, without first giving clear and reasonable warning. This defendant  
18 is also a retailer of the Vitamin Supplements made by other defendants, both in its retail stores  
19 (including a location within the County of Alameda), and over the internet.

20           50. Defendant THRESHOLD ENTERPRISES, LTD. is a business entity that sells, or  
21 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements  
22 that contain lead within the State of California, or made vitamin supplements available for sale in  
23 California, without first giving clear and reasonable warning.

24           51. Defendant UNIVERSAL NUTRITION is a business entity that sells, or has, at times  
25 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
26 lead within the State of California, or made vitamin supplements available for sale in California,  
27 without first giving clear and reasonable warning.

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1           52. Defendant WYETH through its prior ownership of Solgar, Inc., has in the past  
2 manufactured, distributed, or sold vitamin supplements that contain lead within the State of  
3 California, or made vitamin supplements available for sale in California, without first giving clear  
4 and reasonable warning. On a date less than four years prior to the filing of this complaint,  
5 WYETH sold Solgar, Inc., to defendant NBTY, INC.

6           53. Defendant WAL-MART STORES, INC., is a business entity that sells, or has, at  
7 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that  
8 contain lead within the State of California, or made vitamin supplements available for sale in  
9 California, without first giving clear and reasonable warning, including, but not limited to, the  
10 Spring Valley brand.

11           54. Defendants DOES 1 THROUGH 500 are business entities that sell, or have, at times  
12 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain  
13 lead within the State of California, or made vitamin supplements available for sale in California,  
14 without first giving clear and reasonable warning, but whose identities are unknown to Plaintiff.

15 **III. JURISDICTION AND VENUE**

16           55. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,  
17 because this case is a cause not given by statute to other trial courts.

18           56. This Court has jurisdiction over each defendant named above, because each is a  
19 business entity that does sufficient business, has sufficient minimum contacts in California, or  
20 otherwise intentionally avails itself of the California market, through the sale, marketing, and use  
21 of its products in California, to render the exercise of jurisdiction over it by the California courts  
22 consistent with traditional notions of fair play and substantial justice.

23           57. Venue is proper in this Court because the cause, or part thereof, arises in Alameda  
24 County because defendants' products are sold, consumed, and are available for sale, in this  
25 county.

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1 **IV. STATUTORY BACKGROUND**

2 **A. Proposition 65**

3 58. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
4 passed as “Proposition 65” by a vote of the people in November of 1986.

5 59. The warning requirement of Proposition 65 is contained in Health and Safety Code  
6 section 25249.6, which provides:

7 No person in the course of doing business shall knowingly and intentionally expose any  
8 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
9 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

10 60. An exposure to a chemical in a consumer product is one “which results from a  
11 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a  
12 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code  
13 Regs., tit. 27, § 25601, subd. (b).)

14 61. Proposition 65 establishes a procedure by which the state is to develop a list of  
15 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, §  
16 25249.8.) No warning need be given concerning a listed chemical until one year after the  
17 chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

18 62. Any person “violating or threatening to violate” the statute may be enjoined in any  
19 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To “threaten to violate” is  
20 defined to mean “to create a condition in which there is a substantial probability that a violation  
21 will occur.” (*Id.*, § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up  
22 to \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

23 63. Actions to enforce the law “may be brought by the Attorney General in the name of  
24 the People of the State of California or by any district attorney.” (*Id.*, § 25249.7, subd. (c).)  
25 Private parties are given authority to enforce Proposition 65 “in the public interest,” but only if  
26 the private party first provides written notice of a violation to the alleged violator, the Attorney  
27 General, and every District Attorney in whose jurisdiction the alleged violation occurs. If no  
28

1 public prosecutors commence enforcement within sixty days, then the private party may sue.  
2 (Health & Saf. Code, § 25249.7, subdivision (d).)

3 64. In an action by the Attorney General, the Attorney General may “seek and recover  
4 costs and attorney’s fees on behalf of any party who provides a notice pursuant to subdivision (d)  
5 and who renders assistance in that action.” (*Id.*, § 25249.7, subd. (j).)

6 **B. The Unfair Competition Law**

7 65. California Business and Professions Code section 17200 provides that “unfair  
8 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section  
9 17203 of the Business and Professions Code provides that “(a)ny person performing or proposing  
10 to perform an act of unfair competition within this state may be enjoined in any court of  
11 competent jurisdiction.”

12 66. Unlawful acts under the statute include any act that is unlawful that is conducted as  
13 part of business activity, and therefore include violations of Proposition 65.

14 67. Business and Professions Code section 17206, subdivision (a), provides that any  
15 person violating section 17200 “shall be liable for a civil penalty not to exceed two thousand five  
16 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil  
17 action brought in the name of the people of the State of California by the Attorney General or by  
18 any district attorney.” Under section 17205, these penalties are “cumulative to each other and to  
19 the remedies or penalties available under all other laws of this state.”

20 **V. FACTS**

21 68. “Lead” was placed on the Governor’s list of chemicals known to the State of  
22 California to cause reproductive toxicity on February 27, 1987. It is specifically identified under  
23 three subcategories: “developmental reproductive toxicity,” which means harm to the developing  
24 fetus, “female reproductive toxicity,” which means harm to the female reproductive system, and  
25 “male reproductive toxicity,” which means harm to the male reproductive system. (Cal. Code  
26 Regs., tit. 27, § 27001.)

27 69. “Lead and lead compounds” was added to the list of chemicals known to the state to  
28 cause cancer on October 1, 1992. (*Id.*)

1           70. Vitamin Supplements made by defendants contain lead, which is ingested by  
2 consumers when they use the products for their intended purpose.

3           71. Each defendant either knows that its vitamin supplements contain lead, and that  
4 persons using the products as intended will be exposed to lead thereby, or the People are informed  
5 and believe that the defendant has such knowledge, and based on such information and belief, the  
6 People allege that each defendant has such knowledge; or the fact of such knowledge is likely to  
7 have evidentiary support after a reasonable opportunity for further investigation or discovery.

8           72. Each defendant has manufactured, distributed, or sold Vitamin Supplements that  
9 contain lead in California, or has made such Vitamin Supplements available for sale in California.

10          73. The People are informed and believe, and based on such information and belief,  
11 allege, that each defendant has failed to provide clear and reasonable warnings that the use of the  
12 products in question results in exposure to a chemical known to the State of California to cause  
13 birth defects or other reproductive harm, and cancer, and that no such warning was provided to  
14 those individuals by any other person.

15 **VI. FIRST CAUSE OF ACTION**

16                           (Against Each Defendant for Violation of Proposition 65)

17          74. Paragraphs 1 through 78 are realleged as if fully set forth herein.

18          75. The People are informed and believe, and based on such information and belief,  
19 allege, that each defendant employs ten or more persons.

20          76. By committing the acts alleged above, each defendant has, in the course of doing  
21 business, knowingly and intentionally exposed individuals to chemicals known to the State of  
22 California to cause cancer or reproductive toxicity without first giving clear and reasonable  
23 warning to such individuals, within the meaning of Health and Safety Code section 25249.6, or  
24 threatened to violate Section 25249.6, within the meaning of Health and Safety Code section  
25 25249.7, subdivision (a).

26          77. Said violations render each defendant liable to Plaintiff for civil penalties not to  
27 exceed \$2,500 per day for each violation, as well as other remedies.

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1 **VII. SECOND CAUSE OF ACTION**

2 (Against Each Defendant for Unlawful Business Practices)

3 78. Paragraphs 1 through 78 are realleged as if fully set forth herein.

4 79. By committing the acts alleged above, each defendant has engaged in unlawful  
5 business practices which constitute unfair competition within the meaning of Business and  
6 Professions Code section 17200.

7 80. Said violations render each defendant liable to Plaintiff for civil penalties not to  
8 exceed \$2,500 per day for each violation.

9 **VIII. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays that the Court:

11 1. Pursuant to the First and Second Causes of Action, grant civil penalties  
12 according to proof;

13 2. Pursuant to Health and Safety Code section 25249.7 and Business and  
14 Professions Code section 17203, enter such temporary restraining orders, preliminary  
15 injunctions, permanent injunctions, or other orders prohibiting defendants from exposing  
16 persons within the State of California to lead caused by the use of their products without  
17 providing clear and reasonable warnings, as Plaintiff shall specify in further application to  
18 the Court;

19 3. Enter such orders as “may be necessary to restore to any person in interest any  
20 money or property, real or personal, which may have been acquired by means of” these  
21 unlawful acts, as provided in Business and Professions Code section 17203 and other  
22 applicable laws;

23 4. Award Plaintiff its costs of suit;

24 5. Grant such other and further relief as the court deems just and proper.  
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Dated: March 27, 2009

Respectfully Submitted,

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Attorney General of California

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: *People v. 21st Century Healthcare, Inc. et al.*  
Case No.: **RG08426937**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 27, 2009, I served the attached **FIRST AMENDED COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

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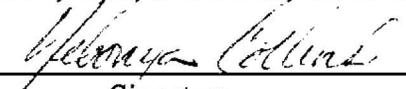
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NBTY, Inc.), Nexgen Pharma, Inc., NF  
Formulas, Inc., and Solgar, Inc.*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 27, 2009, at Oakland, California.

Yebonya Collins

Declarant

  
Signature