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19 Attorneys for Defendant
20 RON TEEGUARDEN ENTERPRISES, INC.

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF SAN FRANCISCO

23 STEPHEN D. GILLETT, an individual,
24 Plaintiff,

25 v.

26 RON TEEGUARDEN ENTERPRISES,
27 INC.,
28 Defendant.

CASE No. CGC-08-477910

~~PROPOSED~~ STIPULATED CONSENT
JUDGMENT

ENDORSED
FILED
San Francisco County Superior Court

JUL 27 2009

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

23 This Consent Judgment is entered into by and between STEPHEN D. GILLETT
24 ("Plaintiff"), an individual and citizen enforcer of Proposition 65 who resides in San Francisco,
25 California, and RON TEEGUARDEN ENTERPRISES, INC. ("Defendant" or "RTE") to resolve
26 all claims raised against Defendant in the Complaint filed in the above-captioned action. This
27 Consent Judgment shall be effective upon entry ("Effective Date"). In consideration of the

1 promises, covenants and agreements herein contained and for other consideration, the sufficiency
2 and adequacy of which is hereby acknowledged by Plaintiff and Defendant (collectively “the
3 Parties”), the Parties agree to the terms and conditions set forth below.

4 1. **INTRODUCTION**

5 1.1 Stephen D. Gillett is a citizen enforcer of Proposition 65 who resides in San
6 Francisco, California.

7 1.2 Defendant is a California corporation headquartered in Los Angeles, California.
8 Defendant manufactures, packages, distributes and sells in California certain traditional Chinese
9 herbal dietary supplements which consist of single or multiple herbal ingredients. The products
10 covered under this Agreement are listed by their trade names on **Exhibit A** to this Consent
11 Judgment and are hereinafter referred to as the “Products.”

12 1.3 On February 27, 1987, the State of California officially listed the chemical lead
13 as a chemical known to cause reproductive toxicity within the meaning of “Proposition 65,” the
14 popular name for the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
15 and Safety Code § 25249.5 *et seq.*

16 1.4 On October 1, 1992, the State of California officially listed the chemicals lead
17 and lead compounds as chemicals known to cause cancer, pursuant to California Health and
18 Safety Code § 25249.8.

19 1.5 The Products have been imported, manufactured, packaged, distributed and/or
20 sold by Defendant for use in California since at least May 9, 2007.

21 1.6 On May 9, 2008, and on February 28, 2009, Plaintiff served Defendant and each
22 of the appropriate public enforcement agencies with documents entitled “60 – Day Notice”
23 alleging that Defendant was in violation of Proposition 65 because the Products contain lead or
24 lead compounds, and the Defendants had failed to warn individuals in California of exposure to
25 such chemicals arising from the use of the Products. Copies of these Notices are attached as
26 **Exhibit B** to this Consent Judgment. Defendant stipulates for the purpose of this Consent
27 Judgment that these Notices are adequate to comply with Cal. Code Regs. Tit. 27. § 25903.
28

1 1.7 The Action was brought by Mr. Gillett in the public interest at least sixty (60)
2 days after Mr. Gillett provided notice of the Proposition 65 violations to Defendant and the
3 appropriate public enforcement agencies, and none of the public enforcement agencies had
4 commenced and begun diligently prosecuting an action against Defendant for such violations.

5 2. **INJUNCTIVE PROVISIONS**

6 2.1 *Defendant's Duty To Ascertain Lead Content of All Products within Sixty*
7 *Days Following the Effective Date.* On or before sixty (60) days following the Effective Date of
8 the Agreement, Defendant shall ascertain the concentration of lead in each of the Products by
9 having the products tested at an EPA-certified laboratory using inductively coupled plasma mass
10 spectrometry ("ICP-MS") under the protocol set forth in EPA Method 6010 or EPA Method
11 6020A. For the purposes of fulfilling its obligations under Paragraph 2.2 below, Defendant shall
12 also be required to have the laboratory test for the average serving size, in grams, for each
13 Product by measuring the mass of ten servings combined and dividing by ten (10), or produce a
14 certification as to average serving size by the manufacturer of the Products and a statement that
15 the Products are manufactured using Good Manufacturing Practices, as that term is defined in
16 regulations promulgated by the United States Food and Drug Administration at 72 Fed. Reg.
17 34751 (June 25, 2007). On or before ninety (90) days following the Effective Date of the
18 Agreement, Defendant shall provide the average serving weight (in grams), lead concentration
19 found by the laboratory pursuant to Paragraph 2.1 above, expressed in micrograms per gram) and
20 the maximum recommended daily dose (in number of servings per day) to Plaintiff on a
21 confidential basis.

22 2.2 *Defendant's Duty to Implement Warning Scheme within Ninety Days*
23 *Following the Effective Date.* On or before ninety (90) days following the Effective Date of the
24 Agreement, Defendant shall ascertain which Products require a Proposition 65 warning for
25 reproductive toxicity (as further described in Paragraph 2.3 below) by multiplying: (a) the lead
26 concentration found by the laboratory pursuant to Paragraph 2.1 above, expressed in micrograms
27 per gram; by (b) the maximum recommended daily dosage (in servings per day, as set forth on the
28

1 product label); by (c) the average serving weight in grams for that Product. The product of this
2 calculation is referred to hereinafter in this Consent Judgment as the "Exposure Calculation."

3 2.3 ***Clear and Reasonable Reproductive Toxicity Warnings for All Products Sold***
4 ***in California Within Ninety (90) Days After The Effective Date of The Consent Judgment.***

5 Within ninety (90) days after the Effective Date of this Consent Judgment, Defendant shall
6 permanently cease all sales and no longer ship for sale or use in California any of the Products
7 that contain lead in an amount for which the Exposure Calculation exceeds 0.5 micrograms per
8 day, or the Maximum Allowable Daily Level ("MADL") as defined in the Proposition 65
9 implementing regulations, unless each unit of such Product bears the following warning statement
10 on its individual unit packaging:

11 **WARNING:** The use of this product will expose you to lead, a
12 substance known to the State of California to cause birth defects or
 other reproductive harm.

13 This warning statement shall be prominently displayed on the unit packaging of each Product
14 with such conspicuousness, as compared with other words, statements, or designs, so as to render
15 it likely to be read and understood by an ordinary individual purchasing or using the Product.
16 Defendant, at its option, may incorporate the warning statement into the text of the label of the
17 Product, or affix a warning sticker to the label.

18 2.4 ***Relief from Warning Requirements for Products Modified or Reformulated***
19 ***after Effective Date of This Agreement.*** The Parties contemplate that, after this Consent
20 Judgment is entered and the Injunctive Provisions in this Paragraph 2 take effect, Defendant may
21 reformulate or modify any or all of the Products, their recommended dosages, manufacturing
22 processes, or their sources of ingredients in ways that may reduce the level of exposure to lead,
23 such that a Proposition 65 warning for some or all of the Products may no longer be required
24 under the Exposure Calculation. The Parties further acknowledge that the amount of lead in any
25 of the Products may vary, depending on such factors as the formula, manufacturing processes or
26 sources of ingredients. Accordingly, Defendant, at its option, may conduct further testing for any
27 batch of any or all of the Products. If the results of such tests, when conducted in accordance
28 with the methods set forth at paragraph 2.1., result in an Exposure Calculation for any Product,

1 when conducted in accordance with the method at paragraph 2.2, that does not exceed 0.5
2 micrograms per day, then the Injunctive Provision set forth at paragraph 2.3 shall not apply for
3 such batch of such Product, provided that Defendant provides a copy of the test results for such
4 Product to Plaintiff thirty days prior to sale or shipment and informs Plaintiff by letter that such
5 Product will be sold or shipped for sale in California without a Proposition 65 reproductive
6 toxicity warning. Any disputes regarding the implementation of this paragraph 2.4 shall be
7 resolved pursuant to paragraph 9.1 below.

8 2.5 *Clear and Reasonable Warnings For Products In the Stream of Commerce*
9 *Prior to Effective Date of Consent Judgment.* Within ninety (90) days following the Effective
10 Date of this Consent Judgment, Defendant shall send a Wholesale Customer Notification Letter to
11 each of its wholesale customers in California that have purchased any of the Products from
12 Defendant in the one hundred and eighty (180) days preceding the Effective Date of this Consent
13 Judgment. This Wholesale Customer Notification Letter shall notify Defendant's wholesale
14 customers regarding the warning requirements of Proposition 65 as they apply to each of the
15 Products, on the basis of the Exposure Calculations described above, and provide each such
16 customer with a sufficient supply of Warning Stickers to apply to all units of the Products
17 remaining in stock. An exemplar of the verbatim language of the Wholesale Customer
18 Notification Letter is attached as **Exhibit C** to this Consent Judgment.

19 2.6 *Ban On California Sales Of Products For Which Exposure Calculation*
20 *Exceeds 15 Micrograms Per Day.* No Product subject to this Consent Judgment may be sold or
21 shipped by Defendant for sale in the State of California after ninety (90) days following the
22 Effective Date if the calculated exposure provide in Paragraph 2.2 herein exceeds fifteen (15)
23 micrograms/day.

24 2.7 *Accountant's Certification.* On or before July 1, 2009, Defendant will provide
25 Plaintiff with a certification from Defendant's accountant stating that the two summary financial
26 reports previously presented to Plaintiff by Defendant accurately summarize the information set
27 forth in the accounting books and records presented to him by Defendant for his review.
28

1 2.8 **Defendant's Sworn Declaration.** On or before July 1, 2009, Defendant will
2 provide Plaintiff with a sworn declaration from an officer of Defendant, stating that the
3 accounting books and records presented to Defendant's accountant by Defendant for his review
4 and preparation of summary reports were true and correct copies of the actual books and records
5 of Defendant, and that those records were maintained in the ordinary course of Defendant's
6 business, and accurately reflect the financial position of Defendant at the times prepared.

7 2.9 **Plaintiff's Right To Reassessment of Penalties.** If Plaintiff discovers evidence
8 that either the certification or declaration called for in paragraphs 2.7 and 2.8, above or the
9 underlying financial information on which they are based, are materially false, Plaintiff shall have
10 the right to invoke the dispute resolution provisions of this Consent Judgment to re-open the
11 terms of the settlement for the narrow purpose of reassessing the appropriateness of the civil
12 penalty assessed herein . In the event Plaintiff takes such steps, he shall bear the burden of proof
13 as to any alleged falsity.

14 2.10 **Website Modification.** Within sixty (60) days of the approval of the settlement
15 by the Court, Defendant will make a thorough review of its website and make a good faith effort
16 to remove any and all misleading or inaccurate information relating to the presence of lead in its
17 products, such as representations that the user of Defendant's products "will not be in any danger
18 of consuming lead when he or she consumes any of our products."

19 3. **CIVIL PENALTIES**

20 3.1 **Civil Penalty Assessment.** Defendant agrees to pay a civil penalty in the amount
21 of \$80,000 pursuant to Health & Safety Code § 25249.7(b). Such payment shall be made to the
22 "Law Offices of Andrew L. Packard Attorney-Client Trust Account;" Plaintiff shall remit 75% of
23 this amount to the State of California pursuant to Health & Safety Code § 25192

24 4. **REIMBURSEMENT OF FEES AND COSTS**

25 4.1 **Reimbursement of Plaintiff's Fees and Costs.** Defendant agrees to reimburse
26 Plaintiff in the amount of \$50,000 to defray Plaintiff's reasonable investigative, expert, consultant
27 and attorneys' fees and costs, and all other costs incurred as a result of investigating and bringing
28 this matter to Defendant's attention, and negotiating a settlement in the public interest. Such

1 payment shall be payable to the "Law Offices of Andrew L. Packard Attorney-Client Trust
2 Account" and remitted to the firm's address noted in the Notice provision below.

3 5. **MANNER OF PAYMENT**

4 5.1 *Payment schedule.* Within ten (10) days following the Effective Date of this
5 Consent Judgment, Defendant shall remit an initial payment of Twenty Thousand Dollars
6 (\$20,000) ("Initial Payment") payable to the "Law Offices of Andrew L. Packard Attorney-Client
7 Trust Account" and delivered to 319 Pleasant Street Petaluma, California 94952. The remaining
8 One Hundred Ten Thousand Dollars (\$110,000) enumerated in paragraphs 3 and 4 above shall be
9 made in eighteen (18) equal monthly payments of \$6,111.11, the first payment being due thirty
10 (30) calendar days after the Initial Payment is due, and each subsequent payment to be paid on the
11 same date of each month thereafter. In the event that any payment owed by Defendant under this
12 Consent Judgment is not remitted or post-marked on or before its due date, Defendant shall be
13 deemed to be in default of its obligations under this Consent Judgment. Plaintiff shall provide
14 written notice to Defendant of any default; if Defendant fails to remedy the default within five (5)
15 business days of such notice, then all future payments due hereunder shall become immediately
16 due and payable, with the prevailing federal funds rate applying to all interest accruing on unpaid
17 balances due hereunder, beginning on the due date of the funds in default.

18 6. **RELEASE OF LIABILITY**

19 6.1 *Release of Liability of Defendant.* Plaintiff, acting on behalf of Plaintiff and on
20 behalf of the general public, hereby releases from liability under Proposition 65 and waives all
21 rights to institute or participate in, directly or indirectly, any claim or form of legal action against
22 Defendant and its parents, subsidiaries, officers, directors, investors, affiliates, shareholders,
23 employees, agents, attorneys, customers, divisions, subdivisions, predecessors, successors,
24 downstream distributors, downstream retailers, downstream customers, and upstream suppliers
25 (including manufacturers of the Products and manufacturers of the raw materials of the Products)
26 and any other person or entity in the course of doing business who distributes, markets or sells the
27 Products sold to them through Defendant, brought under Proposition 65 concerning any alleged
28 failure to provide adequate health hazard warnings for consumer exposures to lead or lead

1 compounds in the Products, as to any Product sold in California on or before the Effective Date of
2 this Consent Judgment. Nothing in this release is intended to apply to any occupational or
3 environmental exposures arising under Proposition 65, or to any products not set forth on Exhibit
4 A to this Consent Judgment.

5 6.2 **Release of Liability of Plaintiff.** Defendant waives all rights to institute any
6 form of legal action against Mr. Gillett for all actions or statements made or undertaken by
7 Mr. Gillett in the course of seeking enforcement of Proposition 65 against Defendant.

8 7. **CONSENT JUDGMENT**

9 7.1 **Consent Judgment.** Plaintiff shall submit this Consent Judgment to be approved
10 by the San Francisco Superior Court pursuant to California Health & Safety Code
11 § 25249.7(f)(4).

12 7.2 **Submission to the Attorney General.** Upon execution of this Consent Judgment
13 by all Parties, Plaintiff shall notice a Motion for Approval & Entry of Consent Judgment in the
14 San Francisco Superior Court pursuant to Title 11, Cal. Code of Regs. § 3000, *et seq.* This
15 motion shall be served upon all of the Parties to the Action and upon the California Attorney
16 General's Office. In the event that the Court fails to approve and order entry of the judgment, this
17 Consent Judgment shall become null and void upon the election of any Party as to them and upon
18 written notice to all of the Parties to the Action pursuant to the notice provisions herein.
19 However, Defendant and Plaintiff shall use best efforts to support entry of this Consent Judgment
20 in the form submitted to the Office of the Attorney General. If the Attorney General objects in
21 writing to any term in this Consent Judgment, the Parties shall use best efforts to resolve the
22 concern in a timely manner and prior to the hearing on the motion to approve this Consent
23 Judgment. If the Parties cannot resolve an objection of the Attorney General, then Plaintiff and
24 Defendant shall proceed with seeking entry of an order by the court approving this Consent
25 Judgment in the form originally submitted to the Office of the Attorney General. If the Attorney
26 General elects to file papers with the Court stating that the People shall appear at the hearing for
27 entry of this Consent Judgment so as to oppose entry of the Consent Judgment, then a party may
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1 withdraw from this Consent Judgment prior to the date of the hearing, with notice to all parties
2 and the Attorney General, and upon such notice this Consent Judgment shall be null and void.

3 7.3 *Stipulation as to Jurisdiction.* For purposes of this Consent Judgment, the
4 Parties stipulate that this Court has subject matter jurisdiction over the allegations in the
5 Complaint. Defendant does not contest the exercise of jurisdiction by this Court to enter this
6 Consent Judgment as a full and final resolution of all causes of action pled against Defendant in
7 the Complaint.

8 7.4 *No Admissions.* The Parties enter into this Consent Judgment to settle disputed
9 claims between them and to avoid prolonged litigation. By execution of this Consent Judgment,
10 Defendant does not admit any violations of Proposition 65 or any other law or standard applicable
11 to warning or disclosure concerning the manufacture, distribution and/or sale of the Products.
12 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
13 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or
14 be construed as an admission by Defendant of any fact, issue of law, or violation of law. Nothing
15 in this Consent Judgment shall prejudice, waive or impair any right, remedy or defense the Parties
16 may have in any other or future legal proceeding. This paragraph shall not diminish or otherwise
17 affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

18 7.5 *Amendment To Complaint.* The 60-Day Notice issued on or about February 28,
19 2009 and attached hereto as part of **Exhibit B** has expired and no public prosecutors have
20 commenced diligent prosecution against Defendant for such violations. Accordingly, upon the
21 Effective Date the Complaint herein shall be deemed amended to include all violations described
22 in that 60-Day Notice.

23 8. **SEVERABILITY**

24 8.1 *Severability.* In the event that any of the provisions of this Consent Judgment
25 are held by a court to be unenforceable, the validity of the enforceable provisions shall not be
26 adversely affected.

1 9. **ENFORCEMENT**

2 9.1 *Disputes and Enforcement.* The Parties agree that compliance with the
3 Injunctive Provisions of this agreement constitutes compliance with Proposition 65 as to any
4 Product distributed for sale or use in California 90 days after the Effective Date of this Consent
5 Judgment. In the event that a dispute arises regarding performance of any of the obligations
6 under this Consent Judgment or with respect to any of the provisions of this Consent Judgment,
7 the Parties shall meet and confer within 20 days of receiving written notice of any alleged
8 violation. In the event the Parties cannot resolve the dispute, this Consent Judgment may be
9 enforced pursuant to Code of Civil Procedure § 664.6 or any other valid provision of law. In
10 addition, Plaintiff may, at his option, also file a new action based upon statutory violations wholly
11 separate from the settlement agreement, occurring after the Effective Date, and subject to a new
12 Notice of Violation. The prevailing party in any dispute regarding compliance with the terms of
13 this Consent Judgment shall be awarded its reasonable fees and costs incurred, in addition to any
14 other relief otherwise ordered by the Court.

15 10. **MODIFICATION**

16 10.1 *Modification of Judgment – Grounds.* The Parties acknowledge that new
17 toxicological information or exposure assessments concerning hazardous substances are
18 continuously becoming available, and that statutory and regulatory standards applicable to the
19 Products may evolve in the future. Accordingly, the Parties agree that either Party may elect to
20 file a motion pursuant to § 664.6 of the California Code of Civil Procedure, and under the
21 conditions set forth below, move the Court for modification of the warning requirements set forth
22 herein on the grounds that (a) they conflict with the applicable law or science concerning the
23 Products, or (b) if a similar case is decided by a court, or settled without objection from the
24 California Attorney General, and such decision or settlement endorses an allowance for
25 comparable products, Defendant shall be entitled to seek judicial modification of the settlement
26 to allow the sale without Proposition 65 warning labels of products with lead concentrations
27 causing lead exposures of less than such allowance, plus the statutorily allowed level of 0.5
28 micrograms per day. Should Defendant seek such judicial modification of the settlement,

1 Plaintiff shall be free to oppose such modification to the extent he does not believe the products in
2 the "similar case" are truly comparable to Defendant's products. Any disputes regarding the
3 issues set forth in this subsection shall be resolved in accordance with the procedures set forth in
4 Paragraph 9 above.

5 10.2 *Modification of Judgment – Procedure.* In the spirit of cooperation and in the
6 interests of minimizing the investigative, expert and attorneys' fees and costs associated with a
7 motion to amend the this Consent Judgment, the Parties agree to meet and confer in good faith as
8 follows. Prior to filing a motion to amend the Consent Judgment, the Party seeking to modify the
9 Consent Judgment shall first provide the non-moving Party and the California Attorney General's
10 Office with any legal or scientific data upon which the motion would rely. The non-moving party
11 and the California Attorney General's Office shall be allowed a period of forty-five (45) days to
12 review that data and provide the moving party with its formal written response (the Attorney
13 General's Office's failure to respond to this submission shall not be construed in any manner to
14 reflect any particular view, on the part of the Attorney General's Office of this Consent Judgment
15 or of the applicable law or science). The Parties then shall meet and confer within ten (10) days
16 of the non-moving party's written response. If, after meeting and conferring, the moving party
17 elects to proceed with a motion to amend this Consent Judgment, it may do so with proper notice
18 to the other Party and the Attorney General's Office as required under the California Code of
19 Civil Procedure. Such a motion may be accompanied by scientific data, studies, written
20 declarations, live testimony or discovery responses.

21 10.3 *Modification of Judgment Based on Modification or Reformulation of*
22 *Products.* The Parties contemplate that Defendant, after carrying out the Injunctive Provisions set
23 forth at Paragraph 2 of this Consent Judgment as to batches of the Products produced prior to the
24 Effective Date of this Consent Judgment, may continue to conduct further testing in accordance
25 with the methods set forth at Paragraph 2 to generate Exposure Calculations for batches of any or
26 all of the Products manufactured subsequently. If the results of such tests for two consecutive
27 batches for any Product result in Exposure Calculations that do not exceed 0.5 micrograms per
28 day when such batches are produced three or more months apart, then Defendant, at its option,

1 may seek a modification of this Consent Judgment to be relieved from complying with the
2 Injunctive Provision for such Product set forth at paragraph 2.3, provided only that Defendant
3 does not change the manufacturing process or source of ingredients for such Product. In seeking
4 such a modification, the burden shall rest on Defendant to adduce clear and convincing evidence
5 that the modification is warranted. Defendant shall produce, as part of its obligation to meet and
6 confer pursuant to Paragraph 9 herein all test results concerning Proposition 65-listed chemicals
7 in the Product(s) at issue and an exemplar of the Product. Plaintiff shall be allowed a period of
8 forty-five (45) days to review that data and provide Defendant with its formal written response.
9 The Parties then shall meet and confer within ten (10) days of the non-moving party's written
10 response. If, after meeting and conferring, Defendant elects to proceed with a motion to amend
11 this Consent Judgment, it may do so with proper notice to the other Party and the Attorney
12 General's Office as required under the California Code of Civil Procedure. Such a motion may
13 be accompanied by scientific data, studies, written declarations, live testimony or discovery
14 responses. Plaintiff agrees not to contest such a motion unless Plaintiff produces test results of its
15 own, from tests conducted by the same test method at an EPA-accredited laboratory,
16 demonstrating that Defendant's test results are not valid.

17 10.4 *Modification of Judgment for New Products.* Ninety (90) days after the
18 Effective Date of this Consent Judgment, Defendant may elect to add new herbal product(s) not
19 currently identified on Exhibit A to this Consent Judgment, provided that, before selling or
20 shipping for sale such new products in or for use in California, Defendant shall comply with the
21 Injunctive Provisions set forth at Paragraph 2 with respect to such new product(s). Such new
22 product(s) shall then be deemed Products(s), and shall be subject to all of the terms of this
23 Consent Judgment. Defendant shall provide Plaintiff with an annual updated list of new
24 Product(s) that Defendant shipped for sale or use in California in the preceding calendar year for
25 which Defendant has ascertained that warnings are required under this Consent Judgment.

26 11. **GOVERNING LAW**

27 11.1 *Governing Law.* The terms of this Consent Judgment shall be governed by the
28 laws of the State of California.

1 12. **NOTICES**

2 12.1 *Notices.* All correspondence and notices required to be provided under this
3 Consent Judgment shall be in writing and shall be sent by first class registered or certified mail
4 addressed as follows:

5 All correspondence to Mr. Gillett shall be mailed to:

6 Stephen D. Gillett
7 c/o Andrew L. Packard
8 THE LAW OFFICES OF ANDREW PACKARD
9 319 Pleasant Street
10 Petaluma, California 94952

11 All correspondence to Defendant shall be mailed to:

12 Ron Teegarden, President and Chief Executive Officer
13 RON TEEGUARDEN ENTERPRISES, INC.
14 315 Wilshire Boulevard
15 Santa Monica, California 90401

16 With a copy to:

17 Stanley W. Landfair, Esq.
18 Rebecca L. Woodson, Esq.
19 MCKENNA LONG & ALDRIDGE LLP
20 101 California Street, 41st Floor
21 San Francisco, California 94111

22 13. **INTEGRATION AND MODIFICATION**

23 13.1 *Integration & Modification.* This Consent Judgment, together with the
24 Exhibits hereto which are specifically incorporated herein by this reference, constitutes the entire
25 agreement between the parties relating to the rights and obligations herein granted and assumed,
26 and supersedes all prior agreements and understandings between the parties. This Consent
27 Judgment may be modified only upon the written agreement of the parties.

28 14. **COUNTERPARTS**

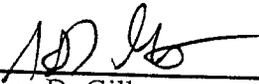
 14.1 *Counterparts.* This Consent Judgment may be executed in counterparts, each of
which shall be deemed an original, and all of which, when taken together, shall constitute one and
the same document.

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15. AUTHORIZATION

15.1 *Authorization.* The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

DATED: June 9, 2009

BY: 
Stephen D. Gillett

DATED: _____

BY: _____
Ron Teegarden
Ron Teegarden Enterprises, Inc.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

EXHIBITS:

- A - Products
- B - Notices of Violation
- C - Wholesale Customer Notification Letter

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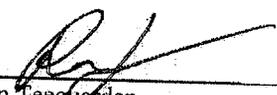
15. AUTHORIZATION

15.1 *Authorization.* The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

DATED: _____

BY: _____
Stephen D. Gillett

DATED: June 9, 2009

BY: 

Ron Teegarden
Ron Teegarden Enterprises, Inc.

IT IS SO ORDERED.

Dated: JUL 27 2009

CHARLOTTE WALTER WOOLARD

JUDGE OF THE SUPERIOR COURT

EXHIBITS:

- A - Products
- B - Notices of Violation
- C - Wholesale Customer Notification Letter

EXHIBIT A

EXHIBIT A

- 001 Heaven Drops Wild Ginseng
- 002 Earth Drops Wild Ginseng
- 003 500 Ginseng Drops
- 004 Wild Reishi Drops
- 005 Duanwood Reishi Drops
- 006 Deer Antler Drops
- 007 Chinese Mountain Ant Extract
- 008 Spring Dragon Drops
- 009 Super Yang Jing Drops
- 011 Sweetfruit Drops
- 012 Schizandra and Lycium Drops
- 014 Male Silk Moth Drops
- 015 Supreme Shen Drops
- 016 American Ginseng
- 017 8 Immortals
- 018 Gecko Rockclimber
- 019 Ginseng Sublime
- 020 Siberian Ginseng (Eluethero)
- 021 Yin Replenisher
- 022 House Ginseng
- 023 Diamond Mind Drops
- 024 Qi Drops
- 025 Dew Drops
- 026 Eucommia Drops
- 027 Heaven Drops Wild Ginseng
- 028 Earth Drops Wild Ginseng
- 029 500 Ginseng Drops
- 100 Supreme Protector
- 104 Ron Teegarden's Super Pill
- 107 Pearl Shen
- 109 Supreme Creation
- 112 Magu's Treasure
- 115 Magu's Secret
- 116 Eternal Jing
- 117 Jing
- 118 Super Jing
- 121 Dragon Jing
- 124 Microcosmic Orbit
- 126 Jeevani
- 127 Women's Jing
- 130 Easy Qi
- 133 Shou Wu Formulation
- 134 Ant Essence
- 137 Strong Bones
- 142 Imperial Garden
- 145 Strength Builder
- 146 Ant Power
- 148 Young at Heart
- 151 Golden Air
- 157 Profound Essence
- 160 Diamond Mind
- 161 Tao in a Bottle
- 166 Buddha's Yang
- 169 Primal Yin Replenisher
- 172 Young Lungs
- 174 Love Goddess Elixir
- 180 Will Power
- 185 Adaptogen Energizer
- 186 Super Adaptogen
- 190 Endocrine Health
- 193 Protector 2000
- 195 Liver Tonic
- 196 CardioPro 2000
- 197 Four Kings
- 200 Isatis Supreme
- 201 Magnolia Sinus
- 205 PerillaClear
- 221 Lights Out
- 224 Hair and Nails
- 236 Remove Stagnation
- 251 Lighten Up Diet Formula
- 252 Golden Voice
- 254 Frame Builder
- 260 Cardiovascular Protector
- 261 Small Volcano
- 263 Open the Lungs
- 264 Daily Regulator
- 291 Eagle Vision
- 306 OptDigest
- 308 Four Things
- 310 Ginseng and Astragalus Combina
- 312 Ten Complete Supertonic
- 314 Ginseng and Longon Combination
- 316 Ginseng Nutritive Combination
- 318 Ginseng and Zizyphus Combinati
- 320 Return to Youth Formula
- 326 Rehmannia Six Combination
- 344 Poria Five Combination
- 372 Dang Gui and Gelatin
- 404 Bupleurum and Rehmannia
- 406 Platycodon and Fritillary
- 408 Yin Qiao
- 410 Pueraria Combination
- 412 Pueraria Nasal
- 416 Cinnamon and Poria
- 420 Gentiana Combination
- 422 Minor Blue Dragon
- 428 Coptis and Scute
- 436 Bupleurum and Cyperus
- 448 Bupleurum and Dragon Bone
- 450 Bupleurum and Peony
- 452 Bupleurum and Dang Gui
- 454 Minor Bupleurum
- 501 Agaricus
- 502 Astragalus
- 506 Cordyceps

514 Duanwood Reishi
516 Deer Placenta
525 Active Ginseng
526 Shilajit
527 Goji
529 Caralluma
530 Muscadinia
534 Gynostemma
539 Pearl Powder
542 He Shou Wu
546 Salvia
548 Schizandra
549 Standardized Scute
557 Tribulus
560 TomKat
562 Salacia
588 Reishi Spore Oil - 30 softgels
589 Reishi Spore Oil - 90 softgels
590 Kinetic Ginseng 30 cap
591 Kinetic Ginseng 100 cap
601 Spring Dragon Longevity Tea
605 Hermit's Mix
683 Beauty Bonbon 1pc
684 Beauty Bonbon - 4pcs
685 Beauty Bonbon - 12pcs
686 Tonic Alchemy
686P30 Tonic Alchemy Packettes
698 Longan Fruit
699 Heaven Mountain Goji Berries

EXHIBIT B

LAW OFFICES OF

ANDREW L. PACKARD

319 PLEASANT STREET, PETALUMA, CALIFORNIA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

May 9, 2008

VIA CERTIFIED MAIL

Mr. Ron Teegarden
President & Chief Executive Officer
RON TEEGUARDEN ENTERPRISES, INC.
315 Wilshire Boulevard
Santa Monica, CA 90401

Re: Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

Dear Sir,

This firm represents Stephen D. Gillett in connection with this notice of violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as "Proposition 65"). This letter serves to provide notification of these violations to you and to the public enforcement agencies.

Pursuant to §25249.7(d) of the statute, Mr. Gillett intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is RON TEEGUARDEN ENTERPRISES, INC. (hereafter, the "Violator"). The Violator manufactures, markets, distributes and/or sells in California herbal dietary supplements. These ongoing violations arise out of exposures to lead and lead compounds from the following herbal dietary supplement products: "Primal Yin Replenisher" and "CardioPro 2000." On February 27, 1987, the State of California officially listed lead as a substance known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as a substance known to cause cancer.

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products by consumers. Accordingly, consumer exposures have occurred and continue to occur

primarily through the ingestion route, but also may occur through the inhalation and/or and dermal contact routes of exposure.

Duration of violations. Each of these ongoing violations has occurred on every day since at least May 9, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

In keeping with the public interest goals of the statute and my client's objectives in issuing this notice, Mr. Gillett is interested in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and additional fees and costs incurred by the parties. Mr. Gillett's address is Post Office Box 170142, San Francisco, California 94117. Tel. (415) 850-5233. However, he has retained this firm in this matter; all communications regarding this Notice of Violation may be directed to my attention at the above-listed firm address and telephone number.

Very Truly Yours,



Andrew L. Packard

Attachments:
OEHHA Summary
Certificate of Merit (w/o AG attachments)
Certificate of Service

LAW OFFICES OF
ANDREW L. PACKARD

319 PLEASANT STREET, PETALUMA, CALIFORNIA 94952
PHONE (707) 763-7227 FAX (707) 763-9227
INFO@PACKARDLAWOFFICES.COM

February 28, 2009

VIA CERTIFIED MAIL

Mr. Ron Teegarden
President & Chief Executive Officer
RON TEEGUARDEN ENTERPRISES, INC.
315 Wilshire Boulevard
Santa Monica, CA 90401

Re: Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

Dear Sir,

This firm represents Stephen D. Gillett in connection with this notice of violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as "Proposition 65"). This letter serves to provide notification of these violations to you and to the public enforcement agencies.

Pursuant to §25249.7(d) of the statute, Mr. Gillett intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is RON TEEGUARDEN ENTERPRISES, INC. (hereafter, the "Violator"). The Violator manufactures, markets, distributes and/or sells in California herbal dietary supplements. These ongoing violations arise out of exposures to lead and lead compounds from herbal dietary supplement products listed on Exhibit A, attached hereto. On February 27, 1987, the State of California officially listed lead as a substance known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as a substance known to cause cancer.

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products by consumers. Accordingly, consumer exposures have occurred and continue to occur primarily through the ingestion route, but also may occur through the inhalation and/or and dermal contact routes of exposure.

February 28, 2009

Page 2

Duration of violations. Each of these ongoing violations has occurred on every day since at least February 28, 2008, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

In keeping with the public interest goals of the statute and my client's objectives in issuing this notice, Mr. Gillett is interested in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and additional fees and costs incurred by the parties. Mr. Gillett's address is Post Office Box 170142, San Francisco, California 94117. Tel. (415) 850-5233. However, he has retained this firm in this matter; all communications regarding this Notice of Violation may be directed to my attention at the above-listed firm address and telephone number.

Very Truly Yours,



Andrew L. Packard

Attachments:

OEHHA Summary

Certificate of Merit (w/o AG attachments)

Certificate of Service

EXHIBIT A

- 001 Heaven Drops Wild Ginseng
- 002 Earth Drops Wild Ginseng
- 003 500 Ginseng Drops
- 004 Wild Reishi Drops
- 005 Duanwood Reishi Drops
- 006 Deer Antler Drops
- 007 Chinese Mountain Ant Extract
- 008 Spring Dragon Drops
- 009 Super Yang Jing Drops
- 011 Sweetfruit Drops
- 012 Schizandra and Lycium Drops
- 014 Male Silk Moth Drops
- 015 Supreme Shen Drops
- 016 American Ginseng
- 017 8 Immortals
- 018 Gecko Rockclimber
- 019 Ginseng Sublime
- 020 Siberian Ginseng (Eluethero)
- 021 Yin Replenisher
- 022 House Ginseng
- 023 Diamond Mind Drops
- 024 Qi Drops
- 025 Dew Drops
- 026 Eucommia Drops
- 027 Heaven Drops Wild Ginseng
- 028 Earth Drops Wild Ginseng
- 029 500 Ginseng Drops
- 100 Supreme Protector
- 104 Ron Teegarden's Super Pill
- 107 Pearl Shen
- 109 Supreme Creation
- 112 Magu's Treasure
- 115 Magu's Secret
- 116 Eternal Jing
- 117 Jing
- 118 Super Jing
- 121 Dragon Jing
- 124 Microcosmic Orbit
- 126 Jeevani
- 127 Women's Jing
- 130 Easy Qi
- 133 Shou Wu Formulation
- 134 Ant Essence
- 137 Strong Bones
- 142 Imperial Garden
- 145 Strength Builder
- 146 Ant Power
- 148 Young at Heart
- 151 Golden Air
- 157 Profound Essence
- 160 Diamond Mind
- 161 Tao in a Bottle
- 166 Buddha's Yang
- 169 Primal Yin Replenisher
- 172 Young Lungs
- 174 Love Goddess Elixir
- 180 Will Power
- 185 Adaptogen Energizer
- 186 Super Adaptogen
- 190 Endocrine Health
- 193 Protector 2000
- 195 Liver Tonic
- 196 CardioPro 2000
- 197 Four Kings
- 200 Isatis Supreme
- 201 Magnolia Sinus
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- 408 Yin Qiao
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516 Deer Placenta
525 Active Ginseng
526 Shilajit
527 Goji
529 Caralluma
530 Muscadinia
534 Gynostemma
539 Pearl Powder
542 He Shou Wu
546 Salvia
548 Schizandra
549 Standardized Scute
557 Tribulus
560 TomKat
562 Salacia
588 Reishi Spore Oil - 30 softgels
589 Reishi Spore Oil - 90 softgels
590 Kinetic Ginseng 30 cap
591 Kinetic Ginseng 100 cap
601 Spring Dragon Longevity Tea
605 Hermit's Mix
683 Beauty Bonbon 1pc
684 Beauty Bonbon - 4pcs
685 Beauty Bonbon - 12pcs
686 Tonic Alchemy
686P30 Tonic Alchemy Packettes
698 Longan Fruit
699 Heaven Mountain Goji Berries

EXHIBIT C

EXHIBIT C



[DATE]

IMPORTANT NOTICE TO BUYERS OF HERBAL PRODUCTS

Dragon Herbs (DH) has initiated a compliance program with California's law concerning toxic exposures: Health & Safety Code §25249.5, also referred to as Proposition 65. It is against California law to expose consumers to lead—or other potentially harmful substances—without providing a clear and reasonable warning concerning the health hazards associated with these substances (e.g., cancer; birth defects and other reproductive harm). The products you have purchased from DH likely contain levels of lead that require such a warning. These substances that trigger the warning are not intentionally added in the making of DH products, but are believed to come from environmental sources, such as the soil, both from lead naturally present in soil and also due to human activities (e.g., poor agricultural practices, burning coal, smelting factories, residual effect of leaded gasoline utilization).

As of [DATE], DH will apply warning labels to products it sells to Californians or that you may resell to Californians. As part of this compliance program, any DH products you sell to Californians must have this warning label. If you have any DH products purchased before [DATE], 200X, DH will provide stickers that you can apply to these products to bring them into compliance when selling to California customers (please let DH know how many stickers you will need).

If you resell these products (either in whole or in part), you are required to provide a clear and reasonable warning within the meaning of Proposition 65 to the California purchasers of the product (i.e., include the warning sticker). Failure to provide these warnings may result in your being subject to civil penalties of up to \$2,500 per violation and other sanctions. You should consult with a lawyer concerning your obligations under the law. The warning requirements described above are likely to apply to other plant based products that you did not obtain from DH. The only way to know is to have such products tested. For additional information regarding the requirements of Proposition 65, you should contact the Office of Environmental Health Hazard Assessment at 916-445-6900 or at www.oehha.ca.gov.

The warning must be provided for *any* products that could contain lead or other substances that come under Proposition 65 regulations (when you sell in California) unless you can establish that the levels of these substances are low enough that the maximum daily recommended dosage of the product will not result in exposures above the levels requiring health hazard warnings.

Yanlin Teeguarden

CEO

Dragon Herbs

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wholesale@dragonherbs.com www.dragonherbs.com