

LAW OFFICES OF

**ANDREW L. PACKARD**

319 PLEASANT STREET, PETALUMA, CALIFORNIA 94952

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INFO@PACKARDLAWOFFICES.COM

August 31, 2009

**VIA CERTIFIED MAIL**

Mr. Jeffrey J. Katke, Chief Executive Officer  
Metagenics, Inc.  
100 Avenida La Pata  
San Clemente, CA 92673

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 **Metagenics, 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 product(s):

*Nazanol*

*Exhilarin*

*Zinlori 75*

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

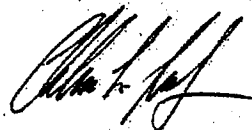
California officially listed lead and lead compounds as a substance known to cause cancer.

**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 August 31, 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 the 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 Attorney General's attachments)

Certificate of Service

**CERTIFICATE OF MERIT**  
**(Re: Stephen D. Gillett's August 31, 2009**  
**Notice of Proposition 65 Violations**  
**Issued to Metagenics, Inc.)**

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

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 exposure to the listed chemicals that are 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 plaintiff's case can be established and that 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 and Safety Code §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 31, 2009

  
\_\_\_\_\_  
Andrew L. Packard

Attachments (for Attorney General Copy only)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 319 Pleasant Street, Petaluma, California 94952.

On August 31, 2009, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY"**

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:


Mr. Jeffrey J. Katke, Chief Executive Officer  
Metagenics, Inc.  
100 Avenida La Pata  
San Clemente, CA 92673

On August 31, 2009, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT (including supporting documentation required by Title 11 CCR §3102)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On August 31, 2009, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelop, addressed to each of the parties **on the Service List attached hereto**, and depositing it in a U.S. Postal Service Office for delivery by First Class Mail.

Executed on August 31, 2009, in Petaluma, California.

  
\_\_\_\_\_  
Andrew L. Packard

319 Pleasant Street  
Petaluma, CA  
The Honorable  
District Attorney  
Petaluma, CA

Service List (Page 1 of 4)

The Honorable Tom Orloff  
District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable William Richmond  
District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

The Honorable Todd Riebe  
District Attorney, Amador County  
708 Court Street, #202  
Jackson, CA 95642

The Honorable Michael Ramsey  
District Attorney, Butte County  
25 County Center Drive  
Oroville, CA 95965

The Honorable Jeffrey Tuttle  
District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable John Poyner  
District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

The Honorable Robert Kochly  
District Attorney, Contra Costa County  
725 Court Street  
Martinez, CA 94553

The Honorable Michael Riese  
District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

The Honorable Gary Lacy  
District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

The Honorable Elizabeth Egan  
District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Robert Holzapfel  
District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

The Honorable Paul Gallegos  
District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

The Honorable Gilbert G. Otero  
District Attorney, Imperial County  
939 West Main Street  
El Centro, CA 92243

The Honorable Arthur Maillet  
District Attorney, Inyo County  
Post Office Drawer D  
Independence, CA 93526

The Honorable Edward R. Jagels  
District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Ronald Calhoun  
District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Gerhard Luck  
District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

The Honorable Robert Burns  
District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

The Honorable Steve Cooley  
District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

The Honorable Ernest LiCalsi  
District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

Service List (Page 2 of 4)

The Honorable Edward Barbarian  
District Attorney, Marin County  
3501 Civic Center, Room 183  
San Rafael, CA 94903

The Honorable Robert Brown  
District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

The Honorable Norman Vroman  
District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

The Honorable Gordon Spencer  
District Attorney, Merced County  
2222 "M" Street  
Merced, CA 95340

The Honorable Jordan Funk  
District Attorney, Modoc County  
204 S Court Street  
Alturas, CA 96101-4020

The Honorable George Booth  
District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

The Honorable Dean Flippo  
District Attorney, Monterey County  
PO Box 1131  
Salinas, CA 93901

The Honorable Gary Lieberstein  
District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

The Honorable Michael Ferguson  
District Attorney, Nevada County  
201 Church Street, Suite 8  
Nevada City, CA 95959

The Honorable Tory Rackauckas  
District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable Brad Fenocchio  
District Attorney, Placer County  
11562 "B" Avenue, Dewitt Center  
Auburn, CA 95603

The Honorable Jeff Cunan  
District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Grover C. Trask, II  
District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

The Honorable Jan Scully  
District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 95814

The Honorable John Sarsfield  
District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

The Honorable Michael Ramos  
District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

The Honorable Bonnie Dumanis  
District Attorney, San Diego County  
330 West Broadway, Room 1320  
San Diego, CA 92112

The Honorable Kamala Harris  
District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

The Honorable James Willett  
District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

The Honorable Gerald Shea  
District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

Service List (Page 3 of 4)

The Honorable James P. Fox  
District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

The Honorable Thomas W. Sneddon, Jr.  
District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

The Honorable George Kennedy  
District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

The Honorable Bob Lee  
District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Gerald Benito  
District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

The Honorable Lawrence Allen  
District Attorney, Sierra County  
Courthouse, Post Office Box 457  
Downieville, CA 95936

The Honorable James Andrus  
District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

The Honorable David Paulson  
District Attorney, Solano County  
600 Union Avenue  
Fairfield, CA 94533

The Honorable Stephan Passalacqua  
District Attorney, Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

The Honorable Jim Brazelton  
District Attorney, Stanislaus County  
800 11<sup>th</sup> Street, Room 200  
Modesto, CA 95353

The Honorable Carl V. Adams  
District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

The Honorable Gregg Cohen  
District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

The Honorable David L. Cross  
District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

The Honorable Phillip Cline  
District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

The Honorable Donald Segerstrom, Jr.  
District Attorney, Tuolumne County  
2 South Green  
Sonora, CA 95370

The Honorable Gregory Totten  
District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

The Honorable David C. Henderson  
District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

The Honorable Patrick McGrath  
District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

Service List (Page 4 of 4)

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

The Honorable Michael Aguirre  
San Diego City Attorney's Office  
1200 3rd Avenue, 12<sup>th</sup> Floor  
San Diego, CA 92101

The Honorable Dennis Herrera  
San Francisco City Attorney's Office  
City Hall, Room 234  
San Francisco, CA 94102

The Honorable Richard Doyle  
San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113