

1 LAW OFFICES OF ANDREW L. PACKARD
Andrew L. Packard (State Bar No. 168690)
2 Michael P. Lynes (State Bar No. 230462)
3 319 Pleasant Street
Petaluma, CA 94952
4 Telephone: (707) 763-7227
Facsimile: (707) 763-9227
5 Email: Andrew@packardlawoffices.com

6 Attorneys for Plaintiff
STEPHEN D. GILLETT
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 STEPHEN D. GILLETT, an individual,) CASE NO. CGC07-461057
11)
Plaintiff,) **STIPULATED CONSENT JUDGMENT**
12)
13 v.)
14)
SHEN HERB, INC.; WHOLE FOODS)
15 MARKET CALIFORNIA, INC.; VITAMIN)
EXPRESS, INC.,)
16 Defendants.)

17 This Consent Judgment is entered into by and between Plaintiff Steven D. Gillett, an
18 individual, and SHEN HERB, INC., a Nevada corporation in good standing. This Consent
19 Judgment shall be effective upon entry by the court if the Attorney General does not object to the
20 consent judgment, or when this consent judgment is final and not further appealable if the
21 Attorney General objects to the consent judgment (the “Effective Date”) . Plaintiff and
22 Defendant (collectively, the “Parties”) hereby stipulate and agree as follows:

23 **WHEREAS:**

- 24 A. Stephen Gillett is a resident of California who resides in San Francisco, California.
25 B. Shen Herb, Inc. (“Shen Herb”) is a corporation that distributes Chinese medicines,
26 dietary supplements and other herbal products in California. Shen Herb distributes and sells

1 these products, some of which contain chemicals listed pursuant to Title 22, California Code of
2 Regulations, §12000 et seq., (hereafter referred to as the "Products").

3 C. The names of each of the Products covered under this Agreement are set forth in
4 Exhibit A, attached hereto;

5 D. On February 27, 1987, the State of California officially listed lead as a substance
6 known to cause reproductive toxicity, pursuant to California Health and Safety Code § 25249.8;

7 E. On October 1, 1992, the State of California officially listed lead and lead
8 compounds as known to cause cancer, pursuant to California Health and Safety Code § 25249.8;

9 F. The Products have been sold by Shen Herb for use in California since at least
10 March 6, 2006;

11 G. On December 23, 2006, Mr. Gillett served Shen Herb, Inc., various other parties
12 and each of the appropriate public enforcement agencies with a document entitled "60-Day
13 Notice" that provided notice that Shen Herb was in violation of California Health and Safety
14 Code § 25249.6 *et seq.* ("Proposition 65") for failing to warn the purchasers and individuals
15 using the Products that the use of the Products exposes them to lead, a chemical known to the
16 State of California to cause cancer and/or reproductive toxicity (a copy of the notice is attached
17 hereto as Exhibit B). Defendant stipulates for the purpose of this Consent Judgment that the 60-
18 Day Notice sent to it is adequate to comply with Title 22, California Code of Regulations
19 §12903;

20 H. The Action was brought by Mr. Gillett in the public interest at least sixty (60) days
21 after Mr. Gillett provided notice of the Proposition 65 violations to Defendant and the
22 appropriate public enforcement agencies and none of the public enforcement agencies had
23 commenced and begun diligently prosecuting an action against Defendant for such violations;
24 and,

25 I. For purposes of this Consent Judgment, each Party stipulates that venue is proper
26 and that this Court has subject matter jurisdiction over the allegations contained in the Action

1 and to enter this Consent Judgment as a full and final resolution of all causes of action pled, or
2 which could have been pled based on the facts alleged in the Action. The Parties enter into this
3 Consent Judgment to settle disputed claims between them and to avoid prolonged litigation. By
4 execution of this Consent Judgment, Defendant does not admit any violations or the applicability
5 of Proposition 65, or any other law or standard applicable to warning or disclosure concerning
6 the manufacture, distribution and/or sale of the Products. Except for the representations made
7 above, nothing in this Consent Judgment shall be construed as an admission by Defendant or
8 Plaintiff of any fact, issue of law, or violation of law, nor shall compliance with this Consent
9 Judgment constitute or be construed as an admission by Defendant or Plaintiff of any fact, issue
10 of law, or violation of law.

11 **NOW, THEREFORE**, in consideration of the promises, covenants and agreements
12 herein contained and for other consideration, the sufficiency and adequacy of which is hereby
13 acknowledged by the parties:

14 1. **Immediate Provision of Clear and Reasonable Health Hazard Warnings For**
15 **All Products.** Beginning on or before July 1, 2007, Shen Herb agrees that it will not ship (or
16 cause to be shipped) for sale or use in California or transmit to any retailer any of the Products
17 unless each such unit of the Product bears the following warning statement on its individual unit
18 label packaging:

19 **WARNING: This product contains lead, a substance known to**
20 **the State of California to cause cancer and/or birth defects or**
21 **other reproductive harm.**

22 The warning statement shall be prominent and displayed on the unit packaging of each Product
23 with such conspicuousness, as compared with other words, statements, or designs so as to render
24 it likely to be read and understood by an ordinary individual purchasing or using the Product.

25 An exemplar for the size and clarity of the Warning set forth in Paragraph 1 of this Agreement is
26 attached hereto as Exhibit C.

2. **Change in Warning Obligations Due To Product Content Or Change In Law.**

1 In the event that Shen Herb believes that, with respect to any Product, a Product has been
2 reformulated or otherwise brought into compliance such that when used at the maximum dosage
3 recommended on the unit packaging or when used at any dosage otherwise recommended or
4 reasonably anticipated, the specific Product does not cause an exposure to lead, lead compounds,
5 or other chemicals triggering a warning within the meaning of Proposition 65, Shen Herb shall
6 have the right to seek a modification of this Consent Judgment relieving Shen Herb of its
7 obligation to provide the warning(s) required under Paragraph 1 herein for any such Product. In
8 order to qualify for such a modification, Shen Herb shall first provide Mr. Gillett with (a) test
9 results from at least two different manufacturing batches of the Product, each batch
10 manufactured at least one month apart from any other, conducted by an EPA-accredited
11 laboratory (or such other laboratory as the Parties may agree) using inductively coupled plasma-
12 mass spectrometry (or such method as the Parties may agree to use); and (b) an exemplar of the
13 Product. Mr. Gillett shall then be allowed a period of thirty (30) days to review and assess such
14 data with its experts. Within forty-five (45) days of Shen Herb's submission to Mr. Gillett, the
15 Parties shall meet and confer (in person or telephonically) regarding the data submitted to Mr.
16 Gillett. In the event that the Parties are able to reach an accord as to whether the warning
17 obligation applicable to the Product should be discontinued, the Parties shall work together in
18 good faith to reach a stipulation amending this consent judgment to reflect such accord. Such
19 stipulation shall be served upon the Attorney General's Office thirty (30) days prior to entry of
20 the amended agreement by the Court. In the event that the Parties are unable to reach an accord
21 as to whether the warning obligation applicable to the Product should be discontinued, Shen
22 Herb shall have the right to petition the Court for such an amendment upon a duly noticed
23 motion. The prevailing party in any such dispute shall be awarded reasonable fees and costs
24 incurred in connection with the motion. A warning within the meaning of Proposition 65 may
25 become unnecessary under certain other circumstances, including repeal of Proposition 65 or its
26 specific measures affecting labeling; change in interpretation of Proposition 65's applicability to

1 the products in question; new data about lead or other components of Shen Herb formulas that
2 might alleviate the warning requirement; or legal rulings that indicate that such labeling is not
3 required under the circumstances of Shen Herb's business conditions or product content. Other
4 than reasonable fees and costs incurred by Gillett in successfully opposing a motion for
5 modification (including any fees or costs associated with the parties' required discussions
6 regarding the failed modification), Gillett agrees that he will not seek to recover attorney's fees
7 for any efforts relating to a modification of the judgment as described in this section.

8 **3. Civil Penalty Assessment.** Within five (5) business days of being provided
9 Notice of the Effective Date of this Consent Judgment, Shen Herb agrees to pay a civil penalty in
10 the amount of \$30,000 pursuant to Health & Safety Code §25249.7(b). Such payment shall be
11 made to the "Law Offices of Andrew L. Packard Attorney Client Trust Account" as set forth
12 below; Plaintiff shall remit 75% of this amount to the State of California pursuant to Health &
13 Safety Code §25192.

14 **4. Reimbursement of Plaintiff's Fees and Costs.** Shen agrees to reimburse
15 Plaintiff in the amount of \$40,000 to defray Plaintiff's reasonable investigative, expert,
16 consultant and attorneys' fees and costs, and all other costs incurred as a result of investigating
17 and bringing this matter to Shen's attention, and negotiating a settlement in the public interest.
18 Such payment shall be made to the "Law Offices of Andrew L. Packard Attorney Client Trust
19 Account" as set forth below.

20 **5. Payment Schedule.** Shen Herb's payment obligations under Paragraphs 3 and 4
21 above shall be due as follows: (a) an initial payment of \$25,000 within five (5) business days of
22 being provided Notice of the Effective Date of this Consent Judgment; (b) the balance of
23 \$45,000 due in eight quarterly installments of \$5,625 each, beginning on September 1, 2007 and
24 continuing quarterly thereafter every ninety days until fully paid. In the event that any payments
25 owed by Shen Herb under this Consent Judgment is not remitted or post-marked on or before its
26 due date, Shen Herb shall be deemed to be in default of its obligations under this Consent

1 Judgment. Plaintiff shall provide written notice to Shen Herb of any default; if Shen Herb fails
2 to remedy the default within two (2) business days of such notice, then all future payments due
3 hereunder shall become immediately due and payable, with the prevailing federal funds rate
4 applying to all interest accruing on unpaid balances due hereunder, beginning on the due date of
5 the funds in default.

6 **6. Plaintiff's Release of Defendant and All Downstream Parties.** Plaintiff, acting
7 on behalf of itself and acting on behalf of the general public, waives all rights to institute any
8 form of legal action against Shen Herb and all downstream parties, and their parents,
9 subsidiaries, affiliates, shareholders, directors, employees, customers, and any other person or
10 entity in the course of doing business who may use, maintain, distribute, market or sell the
11 Products sold to them through Shen Herb, under Proposition 65 concerning any alleged failure to
12 provide adequate health hazard warnings for consumer exposures to lead or lead compounds in
13 the Products sold before the entry of this Consent Judgment. This release shall include but not be
14 limited to Whole Foods Market California, Inc., and Mrs. Gooch's Natural Food Markets, Inc.
15 This paragraph's release of Whole Foods Market California, Mrs. Gooch's Natural Food
16 Markets, Inc., and Vitamin Express, Inc. shall be effective regardless of whether Shen Herb
17 makes the payments provided in Paragraphs 3, 4 and 5.

18 **7. Dismissals.** Upon approval by the Court of this settlement agreement, and before
19 entry of judgment, Plaintiff shall dismiss with prejudice its claims against Whole Foods Market
20 California, Inc. and Vitamin Express, Inc. that are based upon the Shen Herb products (as set
21 forth in Exhibit A).

22 **8. Defendant's Release of Mr. Gillett.** Defendant, by this Agreement, waives all
23 rights to institute any form of legal action against Mr. Gillett for all actions or statements made
24 or undertaken by the Mr. Gillett in the course of seeking enforcement of Proposition 65 against
25 Defendant.

26 **9. Notice to the California Attorney General's Office.** Upon execution of this

1 [Proposed] Consent Judgment by all Parties, Plaintiff shall notice a Motion for Approval &
2 Entry of Consent Judgment in the San Francisco Superior Court pursuant to Title 11, Cal. Code
3 of Regs. §3000, et seq. This motion shall be served upon all of the Parties to the Action and
4 upon the California Attorney General's Office. In the event that the Court fails to approve and
5 order entry of the judgment, this Consent Judgment shall become null and void upon the election
6 of any Party as to them and upon written notice to all of the Parties to the Action pursuant to the
7 notice provisions herein. If this Consent Judgment becomes null and void, or is not approved by
8 the Court within one hundred and eighty (180) days of its execution by all Parties, Plaintiff shall
9 refund all sums paid by Defendant pursuant to Sections 4, 5 and 6 herein within fifteen (15) days
10 of written notice to Plaintiff by Defendant that a refund is due. Defendant and Plaintiff shall use
11 best efforts to support entry of this Consent Judgment in the form submitted to the Office of the
12 Attorney General. If the Attorney General objects in writing to any term in this Consent
13 Judgment, the Parties shall use best efforts to resolve the concern in a timely manner and prior to
14 the hearing on the motion to approve this Consent Judgment. If the Parties cannot resolve an
15 objection of the Attorney General, then Plaintiff and Defendant shall proceed with seeking entry
16 of an order by the court approving this Consent Judgment in the form originally submitted to the
17 Office of the Attorney General. If the Attorney General elects to file a notice or motion with the
18 Court stating that the People shall appear at the hearing for entry of this Consent Judgment so as
19 to oppose entry of the Consent Judgment, then a party may withdraw from this Consent
20 Judgment prior to the date of the hearing, with notice to all parties and the Attorney General, and
21 upon such notice this Consent Judgment shall be null and void and any sums paid hereunder
22 shall be returned to Defendant within fifteen (15) days of the date of the notice.

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

26 11. **Enforcement.** In the event that a dispute arises with respect to any of the

1 provisions of this Agreement, this Agreement may be enforced pursuant to Code of Civil
2 Procedure § 664.6 or any other valid provision of law. The prevailing party in any such dispute
3 shall be awarded reasonable fees and costs incurred. If, at any time after three years from the
4 Effective Date, Shen Herb believes that the warnings it is providing pursuant to this Consent
5 Judgment are different from warnings generally provided by similar companies for similar
6 products, it may so advise Mr. Gillett and propose alternate warning(s), provided that said
7 proposed alternate warnings shall comply with Proposition 65 and its implementing regulations.
8 It is the intent of the Parties that Shen Herb shall be entitled to provide warnings that are similar
9 to warnings generally provided by similar companies for similar products. The Parties shall
10 meet and confer concerning such alternate warning for a period of at least thirty (30) days. In
11 the event that the Parties are unable to reach an accord as to whether the warning should be
12 modified, Shen Herb shall have the right to petition the Court for such an amendment upon a
13 duly noticed motion. The prevailing party in any such dispute shall be awarded reasonable fees
14 and costs incurred in connection with the motion.

15 12. **Governing Law.** The terms of this Agreement shall be governed by the laws of
16 the State of California.

17 13. **Notices.** All correspondence and notices required to be provided under this
18 Agreement shall be in writing and shall be sent by first class registered or certified mail
19 addressed as follows:

20 Correspondence to Mr. Gillett shall be mailed to: Correspondence to Shen Herb shall be mailed to:

21 Stephen D. Gillett
22 c/o Andrew L. Packard
23 The Law Offices of Andrew L. Packard
24 319 Pleasant Street
25 Petaluma, CA 94952

 Noah Albert Schreck
 Shen Herb, Inc.
 P.O Box 8343
 Berkeley, California 94707

26 14. **Integration & Modification.** This Consent Judgment, together with the Exhibits
hereto which are specifically incorporated herein by this reference, constitutes the entire

1 agreement between the parties relating to the rights and obligations herein granted and assumed,
2 and supersedes all prior agreements and understandings between the parties. This Consent
3 Judgment may be modified only upon the written agreement of the parties.

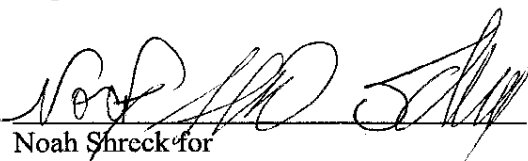
4 15. **Counterparts.** This Consent Judgment may be executed in counterparts, each of
5 which shall be deemed an original, and all of which, when taken together, shall constitute one
6 and the same document.

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

10
11 DATED: _____

BY: _____
Stephen D. Gillett, Plaintiff

12
13 DATED: 7/2/07

14 BY: 
Noah Shreck for
15 Defendant Shen Herb, Inc.

16 IT IS SO ORDERED

17 Dated: _____

18 _____
19 Judge of the Superior Court

1 agreement between the parties relating to the rights and obligations herein granted and assumed,
2 and supersedes all prior agreements and understandings between the parties. This Consent
3 Judgment may be modified only upon the written agreement of the parties.

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

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

10
11 DATED: 7/2/07

BY: 
Stephen D. Gillett, Plaintiff

12
13
14 DATED: _____

BY: _____
Noah Shreck for
Defendant Shen Herb, Inc.

15
16 IT IS SO ORDERED

17 Dated: _____

18 _____
Judge of the Superior Court

1 **EXHIBIT A:** Product List
2 **EXHIBIT B:** Notice of Violation
3 **EXHIBIT C:** Warning Label Exemplar

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



P.O. Box 8343 Berkeley CA, 94707
Phone (510) 548-2181 ~ Fax (510) 548-2183

www.DrShen.com

EXHIBIT A

DR. SHEN LINE

<u>NAME</u>	<u>SIZE</u>	<u>UPC #</u>
1) Dr. Shen's Yin Chiao	90 Tab 750mg	789741000011
2) Dr. Shen's Zong Gan Ling	90 Tab 750mg	789741000028
3) Dr. Shen's Allergy Formula 'A'	90 Tab 750mg	789741000035
4) Dr. Shen's Sinus Formula 'B'	90 Tab 700mg	789741000042
5) Dr. Shen's Stomach Curing	80 Tab 750mg	789741000059
6) Dr. Shen's Rhubarb Rx	90 Tab 700mg	789741000080
7) Dr. Shen's Shou Wu Pill	200 Tab 700mg	789741000134
8) Dr. Shen's Women's Precious Pill	200 Tab 750mg	789741000141
9) Dr. Shen's Yin Chiao Large Size	200 Tab 750mg	789741000158
10) Dr. Shen's Zong Gan Ling Large	200 Tab 750mg	789741000165
11) Dr. Shen's Free & Easy	200 Tab 750mg	789741000172
12) Dr. Shen's Two Immortals	200 Tab 750mg	789741000189
13) Dr. Shen's Jade Shield Pill	150 Tab 650mg	789741000196
14) Dr. Shen's ColdStop	15 Tab 750mg	789741000202
15) Dr. Shen's Gan Mao Ling	60 Tab 700mg	789741000219
16) Dr. Shen's Good Sleep Pills	150 Tab 700mg	789741000226

IMPORTED CHINESE PATENT MEDICINES

Abundant Yin	Jiao Gu Lan	Tian Wang Bu Xin Dan Wan
An Shui	Jin Gu Die Shang Wan	Tong Jing Wan
Aucklandia and Coptis	Jin Gui Shen Qi Wan	Tong Qiao Huo Xue Wan
Bai Hu Tang Wan	Jing Fang Bai Du Wan	Tong Xie Yao Fang Wan
Bai Xing Shi Gan Wan	Juan Bi Wan	Wen Dan Tang Wan
Ba Jin Yin Yang Wan	Liang Ge Wan	Wen Jing Tang Wan
Ban Xia Huo Po Wan	Liu Jun Zi Wan	Wu Ling San Wan
Ba Zheng San Wan	Liu Wei Di Huang Wan	Wu Pi Yin
Bi Yan Pian	Long Dan Xie Gan Wan	Wu Ren Wan
Bi Xie Sheng Shi Wan	Ma Huang Tang Wan	Wu Wei Xiao Du Wan
Bi Xie Fen Qing Wan	Mai Wei Di Huang Wan	Wu Zi Yan Zong Wan
Bu Fei Wan	Margarite Acne Pills	Xiang Sha Liu Jun Zi Wan
Bu Nao Wan	Ma Zi Ren Wan	Xiao Huo Luo Dan Wan
Bu Yang Huang Wu Wan	Ming Mu Di Huang Wan	Xiao Jian Zhong Wan
Bu Zhing Yi Qi Wan	Nei Xiao Luo Li Wan	Xiao Qing Long Wan
Cang Er Zi Wan	Ning Sou Wan	Xiao Yao Wan
Chai Hu Long Gu Mu Li Wan	Nu Ke Ba Zhen Wan	Xin Yi Wan
Chai Hu Shu Gan Wan	Ping Wei San	Xuan Bi Wan
Curing Pills	Pu Ji Xiao Du Yin Wan	Xue Fu Zhu Yu Tang Wan
Da Chai Hu Wan	Qi Bao Mei Ran Dan	Yan Hu Suo Zhi Tong Wan
Da Huang Jiang Zhi Wan	Qing Gu Wan	Yi Guan Jian Wan
Dan Shen Huo Xue Tang Wan	Qing Qi Hua Tan Wan	You Gui Wan
Dan Shen Yin Wan	Qing Wei San Wan	Yi Ping Feng San Wan
Dang Gui Si Ni Wan	Ren Shen Bai Du Wan	Yu Quan Wan
Dang Gui Yin Zi Wan	Run Chang Wan	Zhen Gan Xi Feng Wan
Dao Chi Wan	San Bi Wan	Zhen Wu Tang Wan
Ding Chuan Wan	Sang Ju Yin Wan	Zhi Bai Di Huang Wan
Du Huo Ji Sheng Wan	Sang Piao Xiao Wan	Zhi Gan Cao Wan
Er Chen Wan	Sha Shen Mai Men Dong Tang Wan	Zuo Gui Wan
Er Xian Tang Wan	Shao Fu Zhu Yu Wan	
Fang Feng Tong Sheng	Shao Yao Gan Cao Wan	
Fang Ji Huang Qi Wan	Shen Tong Zhu Yu Wan	
Fargelin	Sheng Mai San Wan	
Gan Mai Da Zao Wan	Shi Chuan Da Bu Wan	
Ge Gen Wan	Shou Wu Pian	
Ge Jie Da Bu Wan	Shu Gan Wan	
Ge Xia Zhu Yu Wan	Si Jun Zi Tang Wan	
Guan Jie Yan Wan	Si Miao Wan	
Gui Pi Wan	Si Ni San Wan	
Gui Zhi Fu Ling Wan	Si Wu Tang Wan	
Huai Jiao Wan	Tao Hong Si Wu Tang Wan	
Huan Shao Dan	Tian Ma Gou Ten Yin Wan	
Huang Lian Jie Du Wan	Tian Qi Wan	
Huang Lian Su Wan	Tian Tai Wu Yao Wan	
Huo Luo Xiao Ling Wan		

LAW OFFICES OF

ANDREW L. PACKARD

319 PLEASANT STREET, PETALUMA, CALIFORNIA 94952

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

INFO@PACKARDLAWOFFICES.COM

December 23, 2006

VIA CERTIFIED MAIL

Betty Schreck, Agent for Service
SHEN HERB, INC.
2322 5th Street
Berkeley, CA 94710

William Blevens, Owner
VITAMIN ADVENTURE
630 Eubanks Ct Ste 900
Vacaville, CA 95688

Demetra Andronico, President
ANDRONICO'S MARKETS, INC.
1109 Washington Ave
Albany, CA 94706

Michael Levesque, Chief Executive Officer
VITAMIN EXPRESS, INC.
1428 Irving Street
San Francisco, CA 94122

Scott Roseman, President
NEW LEAF COMMUNITY MARKETS, INC.
1121 Pacific Ave
Santa Cruz, CA 95060

Gregory Mays, Chief Executive Officer
WILD OATS MARKETS, INC.
3375 Mitchell Lane
Boulder, CO 80301

Eugene N. Stille, Chairman
NUGGET MARKET, INC.
168 Court Street
Woodland, CA 95695

Walter Robb, President
WHOLE FOODS MARKET CALIFORNIA,
INC.
5980 Horton Street, Suite 200
Emeryville, CA 94608

Barry Perzow, President
PHARMACA INTEGRATIVE PHARMACY,
INC.
1200 17th Street
One Tabor Ctr, Ste 3000
Denver, CO 80202

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

Dear Sirs,

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 names of the violators covered by this notice are: SHEN HERB, INC. ANDRONICO'S MARKETS, INC.; NEW LEAF COMMUNITY MARKETS, INC.; NUGGET MARKET, INC.; PHARMACA INTEGRATIVE PHARMACY, INC.; VITAMIN ADVENTURE; VITAMIN EXPRESS, INC.; WILD OATS MARKETS, INC.; and WHOLE FOODS MARKET CALIFORNIA, INC. (hereafter, the "Violators"). The violators market and sell in California dietary supplements and herbal products. These ongoing violations arise out of exposures to lead and lead compounds from the consumer products described below. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Products At Issue. Dietary supplements and herbal products sold under the brand name "Dr. Shen's", "Shen Herbal Products" and "Shen Herb, Inc.", including but not limited to Dr. Shen's™ Sinus, Dr. Shen's™ Allergy, Dr. Shen's™ Yin Chao; Dr. Shen's™ Zong Gan Ling; Dr. Shen's™ Stomach Curing; and Dr. Shen's™ Two Immortals are the subject of this notice.

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products by consumers as recommended on the product label. 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 December 23, 2005, 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 to avoid further unwarned exposures to lead in these products without protracted litigation. Mr. Gillett's address is Post Office Box 170142, San Francisco, California 94117. Tel. (415) 850-5233. Please direct all communications regarding this notice to Andrew L. Packard 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

CERTIFICATE OF MERIT

Re: Stephen D. Gillett's December 23, 2006 Notice of Proposition 65 Violation on
SHEN HERB, INC.

ANDRONICO'S MARKETS, INC.
NEW LEAF COMMUNITY MARKETS, INC.
NUGGET MARKET, INC.
VITAMIN ADVENTURE
VITAMIN EXPRESS, INC.
WILD OATS MARKETS, INC.
WHOLE FOODS MARKET CALIFORNIA, 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: December 23, 2006



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 December 23, 2006, 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:

Betty Schreck, Agent for Service
SHEN HERB, INC.
2322 5th Street
Berkeley, CA 94710

William Blevens, Owner
VITAMIN ADVENTURE
630 Eubanks Ct Ste 900
Vacaville, CA 95688

Demetra Andronico, President
ANDRONICO'S MARKETS, INC.
1109 Washington Ave
Albany, CA 94706

Michael Levesque, Chief Executive Officer
VITAMIN EXPRESS, INC.
1428 Irving Street
San Francisco, CA 94122

Scott Roseman, President
NEW LEAF COMMUNITY MARKETS, INC.
1121 Pacific Ave
Santa Cruz, CA 95060

Gregory Mays, Chief Executive Officer
WILD OATS MARKETS, INC.
3375 Mitchell Lane
Boulder, CO 80301

Eugene N. Stille, Chairman
NUGGET MARKET, INC.
168 Court Street
Woodland, CA 95695

Walter Robb, President
WHOLE FOODS MARKET CALIFORNIA, INC.
5980 Horton Street, Suite 200
Emeryville, CA 94608

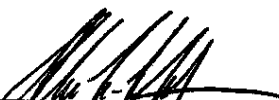
Barry Perzow, President
PHARMACA INTEGRATIVE PHARMACY, INC.
1200 17th Street
One Tabor Ctr, Ste 3000
Denver, CO 80202

On December 23, 2006, 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 December 23, 2006, 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 as 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 US Postal Service Office for delivery by First Class Mail.

Executed on December 23, 2006, in Petaluma, California.



Andrew L. Packard

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, 2nd 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., 3rd Floor
Redwood City, CA 94063

The Honorable Thomas W. Sneddon, Jr.
District Attorney, Santa Barbara County
1112 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 11th 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 2nd 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, 12th 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
151 West Mission Street
San Jose, CA 95110

Office of the City Attorney
City of Sacramento
980 Ninth Street, 10th Floor
Sacramento, CA 95814

Office of the City Attorney
City of Oakland
505 14th Street, 12 Floor
Oakland, CA 94612

Edward G. Weil, Deputy Attorney General
California Attorney General's Office
Proposition 65 Enforcement Reporting Coordinator
1515 Clay Street, Ste. 2000
Oakland, CA 94612

WARNING: This product contains lead, a substance known to the State of California to cause cancer and/or birth defects or other reproductive harm.