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6 Attorneys for Plaintiff
7 STEPHEN D. GILLETT

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

10
11 STEPHEN D. GILLETT, an individual,) CASE NO. CGC07-460692
12 Plaintiff,)
13 v.) **STIPULATED CONSENT JUDGMENT**
14)
15 INSTITUTE FOR TRADITIONAL MEDICINE)
& PREVENTIVE HEALTH CARE, INC., a)
16 non-profit corporation,)
Defendant.)

17
18 This Consent Judgment is entered into by and between Plaintiff Steven D. Gillett, an
19 individual, and the Institute for Traditional Medicine & Preventive Health Care, Inc., an Oregon
20 non-profit corporation in good standing. This Consent Judgment shall be effective upon entry
21 (the "Effective Date") by the court. Plaintiff and Defendant (collectively, the "Parties") hereby
22 stipulate and agree as follows:

23 **WHEREAS:**

- 24 A. Stephen Gillett is a resident of California who resides in San Francisco, California.
25 B. The Institute for Traditional Medicine & Preventive Health Care, Inc. ("ITM") is a
26 non-profit educational research corporation that operates two clinical facilities offering

1 acupuncture and herbal therapy products and services, and distributes articles and other materials
2 concerning herbal products. ITM is also a producer and distributor of products variously referred
3 to as "Chinese Herbal Food Combinations", "herbal formulas" or "formulations." ITM
4 distributes and sells in California these products, some of which contain chemicals listed
5 pursuant to Title 22, California Code of Regulations, §12000 et seq., (hereafter referred to as the
6 "Products");

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

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

11 E. On October 1, 1992, the State of California officially listed the substances lead and
12 lead compounds as known to cause cancer, pursuant to California Health and Safety Code §
13 25249.8;

14 F. The Products have been sold by ITM for use in California since at least December
15 15, 2005;

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

25 H. The Action was brought by Mr. Gillett in the public interest at least sixty (60) days
26 after Mr. Gillett provided notice of the Proposition 65 violations to ITM and the appropriate

1 public enforcement agencies and none of the public enforcement agencies had commenced and
2 begun diligently prosecuting an action against ITM for such violations; and,

3 I. For purposes of this Consent Judgment, each Party stipulates that venue is proper
4 and that this Court has subject matter jurisdiction over the allegations contained in the Action
5 and to enter this Consent Judgment as a full and final resolution of all causes of action pled, or
6 which could have been pled based on the facts alleged in the Action. The Parties enter into this
7 Consent Judgment to settle disputed claims between them and to avoid prolonged litigation. By
8 execution of this Consent Judgment, Defendant does not admit any violations or the applicability
9 of Proposition 65 or the Business and Professions Code, or any other law or standard applicable
10 to warning or disclosure concerning the manufacture, distribution and/or sale of the Products.
11 Except for the representations made above, nothing in this Consent Judgment shall be construed
12 as an admission by Defendant or Plaintiff of any fact, issue of law, or violation of law, nor shall
13 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
14 or Plaintiff of any fact, issue of law, or violation of law.

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

18 1. **Immediate Provision of Clear and Reasonable Health Hazard Warnings For**
19 **All Products.** Beginning on or before April 1, 2007, ITM agrees that it will not ship (or cause to
20 be shipped) for sale or use in California any of the Products unless each such unit of the Product
21 bears the following warning statement on its individual unit label packaging:

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

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

1 the Product. The warning text shall be no smaller than 8-point font. An exemplar for the size
2 and clarity of the Warning set forth in Paragraph 1 of this Agreement is attached hereto as

3 **Exhibit C.**

4 3. **Change in Warning Obligations Due To Product Content Or Change In**

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

1 shall be awarded reasonable fees and costs incurred in connection with the motion. A warning
2 within the meaning of Proposition 65 may become unnecessary under certain other
3 circumstances, including repeal of Proposition 65 or its specific measures affecting labeling;
4 change in interpretation of Proposition 65's applicability to the products in question; new data
5 about lead or other components of ITM formulas that might alleviate the warning requirement; or
6 legal rulings that indicate that such labeling is not required under the circumstances of ITM's
7 business conditions or product content.

8 4. **Warnings For Products In The Stream of Commerce.** Within Sixty (60) days
9 of the Effective Date of this Agreement, ITM agrees to send a Notification Letter to each of its
10 customers who have purchased any of the Products from ITM in the ninety (90) days preceding
11 the Execution Date of this Agreement. This Notification Letter shall notify ITM's customers
12 regarding the warning requirements of Proposition 65 as they apply to each of the Products, and
13 provide each such customer with a sufficient supply of Warnings Stickers to apply to all units of
14 the Product remaining in stock. Exemplars of the verbatim language of the Notification Letter
15 are attached hereto as **Exhibits D & E**. ITM agrees to send Exhibit D to all customers who have
16 purchased any of the Products from ITM in the ninety (90) days preceding the Execution Date of
17 this Agreement, except those customers whom it knows, based on the customer's written
18 attestation, to be exempt from Proposition 65's requirements (to whom ITM shall send Exhibit
19 E).

20 5. **Civil Penalty Assessment.** Within five (5) business days of being provided
21 Notice of the Effective Date of this Consent Judgment, ITM agrees to pay a civil penalty in the
22 amount of \$8,000 pursuant to Health & Safety Code §25249.7(b). Such payment shall be made
23 to the "Law Offices of Andrew L. Packard Attorney Client Trust Account"; Plaintiff shall remit
24 75% of this amount to the State of California pursuant to Health & Safety Code §25192.

25 6. **Restitution Assessment.** Within five (5) business days of being provided Notice
26 of the Effective Date of this Consent Judgment, ITM agrees to make a restitutionary payment in

1 the amount of \$12,000 to the Rose Foundation for Communities and the Environment for
2 projects to reduce exposures to toxic chemicals, and to increase consumer, worker and
3 community awareness of the health hazards posed by toxic chemicals. Payment of these funds
4 shall be payable to "Rose Foundation for Communities and the Environment" and remitted to the
5 Rose Foundation, Attn: Tim Little, 6008 College Ave., Ste. 10, Oakland, CA 94618, (510) 658-
6 0702 within five (5) business days of being provided Notice of the Effective Date of this Consent
7 Judgment.

8 7. **Reimbursement of Plaintiff's Fees and Costs.** ITM agrees to reimburse
9 Plaintiff in the amount of \$15,000 to defray Plaintiff's reasonable investigative, expert,
10 consultant and attorneys' fees and costs, and all other costs incurred as a result of investigating
11 and bringing this matter to ITM's attention, and negotiating a settlement in the public interest.
12 Such payment shall be remitted to the Law Offices of Andrew L. Packard Attorney Client Trust
13 Account within five (5) business days of being provided Notice of the Effective Date of this
14 Consent Judgment.

15 8. **Plaintiff's Release of ITM.** Plaintiff, acting on behalf of itself and acting on
16 behalf of the general public, waives all rights to institute any form of legal action against ITM,
17 and its parents, subsidiaries, affiliates, shareholders, directors, employees, customers, and any
18 other person or entity in the course of doing business who may use, maintain, distribute, market
19 or sell the Products sold to them through ITM, brought under Proposition 65 concerning any
20 alleged failure to provide adequate health hazard warnings for consumer exposures to lead or
21 lead compounds in the Products sold before the entry of this Consent Judgment.

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

26 10. **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 & Entry
2 of Consent Judgment in the San Francisco Superior Court pursuant to Title 11, Cal. Code of
3 Regs. §3000, et seq. This motion shall be served upon all of the Parties to the Action and upon
4 the California Attorney General's Office. In the event that the Court fails to approve and order
5 entry of the judgment, this Consent Judgment shall become null and void upon the election of
6 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 shall
22 be returned to Defendant within fifteen (15) days of the date of the notice.

23 11. **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 12. **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, ITM believes that the warnings it is providing pursuant to this Consent Judgment
5 are different from warnings generally provided by similar companies for similar products, it may
6 so advise Mr. Gillett and propose alternate warning(s), provided that said proposed alternate
7 warnings shall comply with Proposition 65 and its implementing regulations. It is the intent of
8 the Parties that ITM shall be entitled to provide warnings that are similar to warnings generally
9 provided by similar companies for similar products. The Parties shall meet and confer
10 concerning such alternate warning for a period of at least thirty (30) days. In the event that the
11 Parties are unable to reach an accord as to whether the warning should be modified, ITM shall
12 have the right to petition the Court for such an amendment upon a duly noticed motion. The
13 prevailing party in any such dispute shall be awarded reasonable fees and costs incurred in
14 connection with the motion.

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

17 14. **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 All correspondence to Mr. Gillett 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

26 All correspondence to ITM shall be mailed to:
 Steve Lichtman
 Executive Director
 Institute for Traditional Medicine & Preventive Health Care, Inc.

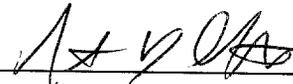
1 2017 SE Hawthorne Boulevard
2 Portland, OR 97214

3 15. **Integration & Modification.** This Consent Judgment, together with the Exhibits
4 hereto which are specifically incorporated herein by this reference, constitutes the entire
5 agreement between the parties relating to the rights and obligations herein granted and assumed,
6 and supersedes all prior agreements and understandings between the parties. This Consent
7 Judgment may be modified only upon the written agreement of the parties.

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

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

14 DATED: 3/28/07

15 BY: 
16 Stephen D. Gillett, Plaintiff

17 DATED: 3/21/07

18 BY: 
19 Steve Lichtman, Executive Director
20 Institute for Traditional Medicine &
21 Preventive Health Care, Inc., Defendant

22 IT IS SO ORDERED

23 Dated: _____

24 _____
25 Judge of the Superior Court

26 **EXHIBIT A:** Product List

EXHIBIT B: Notice of Violation

STIPULATED CONSENT JUDGMENT

Case No. CGC07-460692

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EXHIBIT C: Warning Label Exemplar
EXHIBIT D: Verbatim language of Notification Letter For Resellers
EXHIBIT E: Verbatim language of the Notification Letter For Exempt Resellers

EXHIBIT A

Exhibit A -- Products Covered by Consent Judgment

Section 1. Seven Forests formulations. *These formulations are made from Chinese herbs (crude herbs and/or dried extracts) and all are in tablet form.*

Acanthopanax Tablets	Coptis/Evodia	Lindera 15
Achyranthes Tablets	Cord Tablets	Liquidambar 15
Acorus Tablets	Cordyceps 9	Lonicera 13
Albizzia 9	Corydalis 5	Lotus 9
Alisma 16	Cuscuta 15	Lotus Leaf Tablets
Anemarrhena Tablets	Cyperus 18	Lower Palace Tablets
Angelica 14	Diagnostic Tablets	Lysimachia 3
Antler 8	Dry Ginger Tablets	Man's Treasure
Ardisia 16	Drynaria 12	Milletia 9
Arisaema 10	Eclipta Tablets	Morus Fruit Tablets
Astragalus 10+	Eleuthero 10+	Myrrh Tablets
Astragalus 16	Epimedium 8	Nuphar 14
Atractylodes Tablets	Eucommia 18	Omphalia 11
Bamboo 11	Eupolyphaga Tablets	Otolith Tablets
Belamcanda 15	Forsythia 18	Paris 7
Bidens 6	Fu-shen 16	Patrinia 7
Blue Citrus Tablets	Gallus-Malt Tablets	Peony 9
Blue Earth Dragon	Ganoderma 18	Perilla Seed Tablets
Bupleurum 12	Gardenia 7	Picrorrhiza 11
Bupleurum-Gardenia	Gastrodia 9	Pinellia 16
Bupleurum-S	Gecko-A	Plantago Seed Tablets
Carthamus 11	Gentiana 12	Platycodon 14
Celosia 10	Ginseng 6	Prunella 8
Chiang-huo 13	Ginseng 18	Pseudostellaria 9
Chien-li Tablets	Gynostemma Tablets	Pueraria 10
Chih-ko/Curcuma	Haliotis 10	Pyrrosia 14
Chrysanthemum 9	Ilex 15	Reconciling Tablets
Cinnamon 14	Imperata 10	Recovery Pills
Cinnamon/Rehmannia	Isatis 6	Red Peony Tablets
Clerodendron 6	Jade Screen Tablets	Rehmannia 16
Cnidium 9	Kochia 13	Remission Pills
Coix Tablets	Laminaria 4	Restorative Tablets
Composition-A	Lapis 16	Rhodiola 8
Compound GL	Lily 14	Rhubarb 17

Salvia/Amber Tablets
 Salvia/Ligustrum Tablets
 Salvia Shou Wu
 San Qi 17
 Sappan 12
 Scrophularia 12
 Shen-chu 16
 Shou Wu Tablets
 Siler Tablets
 Sparganium 12

Stabilizing Tablets
 Stemona Tablets
 Styrax 14
 Tang-kuei 18
 Tang-kuei Tablets
 Tortoise Shell Tablets
 Tremella 14
 Trichosanthes Fruit Tablets
 Turtle Shell Tablets
 Uncaria 6

Upper Palace Tablets
 Viola 12
 Vitality Tablets
 Woman's Treasure
 Xanthium 12
 Zaocys Tablets
 Zedoaria Tablets
 Zhu Dan Tablets
 Zizyphus 18

Section 2. Pine Mountain formulations. *These are made from Chinese herbs (crude herbs and/or dried extracts), and all are in tablet form.*

Astragalus Extract Tablets
 Bao He Wan
 Bi Yan Pian
 Bu Nao Wan
 Bu Zhong Yi Qi Wan
 Cordyceps Tablets
 Dan Shen Pian
 Dang Gui Pian
 Er Chen Wan
 Gui Pi Wan
 Hua Zhi Ling
 Huo Xiang Zheng Qi Pian

Improved Xiao Chai Hu
 Wan
 Jin Gui Shen Qi Wan
 Kang Ning Pian
 Ling Zhi Pian
 Liu Wei Di Huang Wan
 Long Dan Xie Gan Wan
 Ming Mu Di Huang Wan
 Ping Chuan Pian
 Qi Ye Pian
 Qian Jin Zhi Dai Wan
 Qing Qi Hua Tan Wan

Ren Shen Feng Wang Pian
 Sheng Fa Wan
 Shu Gan Wan
 Tian Ma Gou Teng Pian
 Tian Wang Bu Xin Dan
 Tien-chi Ginseng Tablets
 Wu Ji Bai Feng Wan
 Xiang Sha Jun Zi Wan
 Xiao Yao Wan
 Yao Tong Pian
 Yin Qiao Jie Du Pian
 Zhi Bai Di Huang Wan

Section 3. White Tiger Formulas. *These are made from various materials, including Chinese herbs (crude or dried extract), vitamins, minerals, "nutriceuticals" (isolated or partially isolated active components), etc.*

Altarum
 Apha-Curcumone
 Baicalcumin
 Berberine Plus
 Boswellamine
 Bromelgin
 Calmagnium
 Cartaequin
 Coricepium
 Galletaine

Genistemma
 Gincofolin
 Guggul-Rose
 Holothagate
 Iridiod Complex
 Ligustrazine Plus
 Lycuvin
 Melazandra
 Mentholain
 Myrolea-B

Nardova
 Oxymatrine
 Pantosterone
 Propol-Gold
 Pueralax
 Quercenol
 Serageum
 Taraxogen

Section IV. Jintu Products. *These are made from dried extracts of Chinese herbs, all in tablet form..*

China Rare Fruits Blend
Lōhan-Go
Tibetan Rhodiola Blend

Section V. Granule formulations. *These are made from dried extracts of Chinese herbs, blended at ITM, in loose form (granules).*

Xiao Liu Fang	Wuling Jianya Tang	Niu Che Dan Dihuang
E Leng Xuefu Zhuyu Tang	Shanzha Jianfei Tang	Tang
Qing Tui Fang	Buxue Zhixue Tang	Bi Yan Tang
Jiawei Baishao Gancao	Baihua Banzhi Kangyi	
Tang	Tang	
Huoxue Yaotong Tang	Huayu Shengtong Tang	

Section VI. Herbs from India formulas. *These are made from herbs or dried herb extracts from India; all are in tablet form.*

Artoralt	Cordifolan	Saracant
Ashwador	Hingwastaka	Shavrin
Coprid	Rumastal	Varunal

Section VII. Miscellaneous specialty items. *These are Chinese herbs, whole, powdered, or in slices.*

Anti-parasite Powder
Astragalus/Oldenlandia Tea
Chinese Herb Mix for Chicken Soup or Tofu Soup
Fritillaria Mixture for Pear
Longan fruit
Lycium fruit

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

December 15, 2006

Via Certified Mail & US Mail

Steve Lichtman
Executive Director
Institute for Traditional Medicine & Preventive Health Care, Inc.
2017 SE Hawthorne Boulevard
Portland, OR 97214

cc: Michael Burton, Agent for Service of Process
Institute for Traditional Medicine & Preventive Health Care, Inc.
1009 3rd Street
Santa Cruz, CA 95060

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

Dear Mr. Lichtman:

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 **The Institute for Traditional Medicine & Preventive Health Care, Inc.** ("ITM"). ITM is a non-profit educational research corporation that operates two clinical facilities offering acupuncture and herbal therapy products and services, and distributes articles and other materials concerning herbal products. ITM is also a producer and distributor of products variously referred to as "Chinese Herbal Food Combinations", "herbal formulas" or "formulations", and dried extracts or "granules" used to make personalized formulas. 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. ITM's dietary supplements sold under the brand names **Pine Mountain, Seven Forests, Herbs From India** and **White Tiger** (including but not limited to Seven Forests Brand *Chien-li Tablets*, Seven Forests Brand *Lotus 9*, Seven Forests Brand *San Qi 17* and Pine Mountain Brand *Yao Tong Pian*) 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 ingestion, but also may occur through inhalation and/or and dermal contact.

Duration of violations. Each of these ongoing violations has occurred on every day since at least December 15, 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 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 and is represented by this firm in connection with this matter. 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

EXHIBIT C

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

EXHIBIT D

EXHIBIT D

[on ITM Letterhead]

[DATE]

**IMPORTANT NOTICE TO BUYERS OF
CHINESE HERBAL PRODUCTS**

The Institute for Traditional Medicine (ITM) 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 ITM likely contain levels of lead (and possibly other substances, such as mercury, arsenic and cadmium) that require such a warning. These substances that trigger the warning are not intentionally added in making ITM's 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 activity (e.g., poor agricultural practices, burning coal, smelting factories, residual effect of leaded gasoline utilization).

As of April 1, ITM will apply warning labels to products it sells to Californians or that you may resell to Californians. As part of this compliance program, any ITM products you sell to Californians must have this warning label. If you have any ITM products purchased before April 1, 2007, , ITM will provide stickers that you can apply to these products to bring them into compliance when selling to California customers (please let ITM 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 herb products that you did not obtain from ITM. 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.

Subhuti Dharmananda,
Director, ITM

EXHIBIT E

EXHIBIT E

[on ITM Letterhead]

[DATE]

**IMPORTANT NOTICE TO BUYERS OF
CHINESE HERBAL PRODUCTS**

The Institute for Traditional Medicine (ITM) 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 ITM likely contain levels of lead (and possibly other substances, such as mercury, arsenic and cadmium) that require such a warning. These substances that trigger the warning are not intentionally added in making ITM's 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 activity (e.g., poor agricultural practices, burning coal, smelting factories, residual effect of leaded gasoline utilization).

As of April 1, ITM will apply warning labels to products it sells to Californians or that you may resell to Californians. As part of this compliance program, any ITM products you sell to Californians must have this warning label. If you have any ITM products purchased before April 1, 2007, ITM will provide stickers that you can apply to these products to bring them into compliance when selling to California customers (please let ITM know how many stickers you will need).

If you resell these products 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). Proposition 65 limits exposure to lead for any product to 1/1000 the smallest amount known to have caused harm. The amount triggering the requirement for warning labels is 0.5 micrograms of lead for a daily dose. ITM products, and many other herbal products, have lead levels exceeding this amount. 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.

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