

1 ANDREW L PACKARD (BAR NO. 168690)  
2 LAW OFFICES OF ANDREW L. PACKARD  
3 100 Petaluma Blvd. N., Ste. 301  
4 Petaluma, California 94952  
5 Telephone: (707) 763-7227  
6 Facsimile: (707) 763-9227  
7 Email: Andrew@Packardlawoffices.com

8 Attorneys for Plaintiff  
9 STEPHEN D. GILLETT

10 TRENTON H. NORRIS (BAR NO. 164781)  
11 RHONDA S. GOLDSTEIN (BAR NO. 250387)  
12 ARNOLD & PORTER LLP  
13 7th Floor  
14 Three Embarcadero Center  
15 San Francisco, CA 94111  
16 Telephone: (415) 471-3100  
17 Facsimile: (415) 471-3400  
18 E-Mail: Trent.Norris@aporter.com  
19 E-Mail: Rhonda.Goldstein@aporter.com

20 Attorneys for Defendant  
21 RON TEEGUARDEN ENTERPRISES, INC.

22  
23  
24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
25 **COUNTY OF SAN FRANCISCO**

26 STEPHEN D. GILLETT,

27 Plaintiff,

28 v.

RON TEEGUARDEN ENTERPRISES, INC.,

Defendant.

CASE No.: CGC-08-477910

**[PROPOSED] AMENDED STIPULATED  
CONSENT JUDGMENT**

29 This Amended Consent Judgment is entered into by and between STEPHEN D. GILLETT  
30 (“Plaintiff”), an individual and citizen enforcer of Proposition 65 who resides in San Francisco,  
31 California, and RON TEEGUARDEN ENTERPRISES, INC. (“Defendant”) to resolve all claims  
32 raised against Defendant in the Complaint filed in the above-captioned action (“Action”). This  
33 Amended Consent Judgment incorporates and supersedes the original Consent Judgment entered

1 into between Plaintiff and Defendant in the Action (“Original Consent Judgment”), which was  
2 entered by the Court on July 27, 2009 and deemed effective as of that date (“Effective Date”). In  
3 consideration of the promises, covenants and agreements herein contained and for other  
4 consideration, the sufficiency and adequacy of which is hereby acknowledged by Plaintiff and  
5 Defendant (collectively “the Parties”), the Parties agree to the terms and conditions set forth  
6 below.

7 **1. INTRODUCTION**

8 1.1 Stephen D. Gillett is a citizen enforcer of Proposition 65 who resides in San  
9 Francisco, California.

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

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

19 1.4 On October 1, 1992, the State of California officially listed the chemicals lead and  
20 lead compounds as chemicals known to cause cancer, pursuant to California Health and Safety  
21 Code § 25249.8.

22 1.5 The Products have been imported, manufactured, packaged, distributed and/or  
23 sold by Defendant for use in California since at least May 9, 2007.

24 1.6 On May 9, 2008, on February 28, 2009, and on April 6, 2012, Plaintiff served  
25 Defendant and each of the appropriate public enforcement agencies with documents entitled “60 –  
26 Day Notice” alleging that Defendant was in violation of Proposition 65 because the Products  
27 contain lead or lead compounds, and the Defendants had failed to warn individuals in California of  
28 exposure to such chemicals arising from the use of the Products. Copies of these Notices are

1 attached as **Exhibit B** to this Amended Consent Judgment. Defendant stipulates for the purpose of  
2 this Amended Consent Judgment that these Notices are adequate to comply with Cal. Code Regs.  
3 Tit. 27. § 25903.

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

8 **2. INJUNCTIVE PROVISIONS**

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

25 2.2 *Defendant's Duty To Ascertain Lead Content of All Product Again, On Or*  
26 *Before April 2, 2012.* On or before April 2, 2012, Defendant shall ascertain the concentration of  
27 lead in each of the Products by having the products tested at an EPA-certified laboratory using  
28 inductively coupled plasma mass spectrometry ("ICP-MS") under the protocol set forth in EPA

1 Method 6020A. For the purposes of fulfilling its obligations under Paragraph 2.4 below,  
2 Defendant shall also direct and have the laboratory test for the average serving size, in grams, for  
3 each Product by measuring the mass of ten servings combined and dividing by ten (10). On or  
4 before April 2, 2012, Defendant shall provide the average serving weight (in grams) for each  
5 Product, lead concentrations found by the laboratory (expressed in micrograms per gram) and the  
6 maximum recommended daily dose (in number of servings per day) to Plaintiff on a confidential  
7 basis.

8 **2.3 Defendant's Duty to Implement Warning Scheme within Ninety Days**

9 **Following the Effective Date of the Original Consent Judgment.** On or before ninety (90) days  
10 following the Effective Date of the Original Consent Judgment, Defendant was required to  
11 ascertain which Products require a Proposition 65 warning for reproductive toxicity (as further  
12 described in Paragraph 2.5 below) by multiplying: (a) the lead concentration found by the  
13 laboratory pursuant to Paragraph 2.1 above, expressed in micrograms per gram; by (b) the  
14 maximum recommended daily dosage (in servings per day, as set forth on the product label); by  
15 (c) the average serving weight in grams for that Product. The product of this calculation is referred  
16 to hereinafter in this Amended Consent Judgment as the "Exposure Calculation."

17 **2.4 Defendant's Duty to Re-Implement Warning Scheme On Or Before April 2, 2012.**

18 On or before April 2, 2012, Defendant shall ascertain which Products require a Proposition 65  
19 warning for reproductive toxicity (as further described in Paragraph 2.5 below) by undertaking the  
20 Exposure Calculation described in Paragraph 2.3 above (using the laboratory data generated  
21 pursuant to Paragraph 2.2 above).

22 **2.5 Clear and Reasonable Reproductive Toxicity Warnings for All Products Sold**  
23 **in California Within Ninety (90) Days After The Effective Date of The Original Consent**  
24 **Judgment.** As of ninety (90) days after the Effective Date of the Original Consent Judgment,  
25 Defendant was required to permanently cease all sales in California and no longer ship for sale or  
26 use in California any of the Products that contain lead in an amount for which the Exposure  
27 Calculation exceeds 0.5 micrograms per day, or the Maximum Allowable Daily Level ("MADL")  
28 as defined in the Proposition 65 implementing regulations, unless each unit of such Product bears

1 the following warning statement (“Warning Statement”) on its individual unit packaging:

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

5 The Warning Statement shall be prominently displayed on the unit packaging of each Product  
6 with such conspicuousness, as compared with other words, statements, or designs, so as to render  
7 it likely to be read and understood by an ordinary individual purchasing or using the Product. By  
8 April 2, 2012, Defendant shall affix to each such Product a sticker bearing the Warning Statement  
9 and no other text (“Warning Sticker”). By April 1, 2013, Defendant shall incorporate the Warning  
10 Statement into the text of the label of the Product, subject to the following limited exceptions  
under which Defendant may continue to affix a Warning Sticker to the Product:

- 11           a. Between production runs, to cover a period of no more than sixty (60) days in which  
12           Defendant has run out of stock of a Product labeled for the California market, and  
13           needs to apply Warning Stickers to products originally labeled for the national market  
14           to sell in California until the next production run;
- 15           b. In the twelve (12)-month Launch Period for a new Product (as set forth in Paragraph  
16           10.4 below). For purposes of this Amended Consent Judgment, the Launch Period  
17           shall mean the twelve (12)-month period following the date that a new Product is first  
18           sold in California by Defendant;
- 19           c. For any Product sold by Defendant, but for which Defendant has neither  
20           manufacturing control nor labeling control (“Third Party Products”). For purposes of  
21           this Amended Consent Judgment, “manufacturing control” shall mean the power to  
22           determine the Product formulation and to establish the quality control standards for the  
23           Product and its raw materials. “Labeling control” shall mean the power to determine  
24           the design and content of the Product label and packaging; or,
- 25           d. As otherwise provided under Paragraph 10.6 (“Warnings for Products Re-Tested By  
26           Plaintiff After Entry of this Amended Consent Judgment”).

27           2.6 *Provision of Additional Language.* Defendant may add additional language  
28           addressing lead (“Additional Language”) to the label of a Product sold by Defendant on or after

1 April 2, 2012, or, if the Product bears a Warning Sticker pursuant to Paragraph 2.5 above, to a  
2 sticker on the Product that is separate and apart from the Warning Sticker, provided that: (1) a  
3 graphic mock-up showing the language of the Additional Language and the placement of the  
4 Additional Language on the Product, or, if the Additional Language is being added by means of  
5 stickers, the placement of such stickers bearing the Additional Language in relation to the Warning  
6 Statement, irrespective of whether the Warning Statement itself is provided by way of  
7 incorporated label artwork or by stickers has been specifically reviewed and approved in writing  
8 by Plaintiff, and, (2) the Additional Language is physically separated from the Warning Statement,  
9 as follows:

- 10 a. The Warning Statement and the Additional Language shall be located parallel to each  
11 other, but neither on the top nor bottom of the Product bottle or container;
- 12 b. The Warning Statement and the Additional Language shall appear in differing fonts,  
13 and the Warning Statement shall be in a font size that is equal to or greater than the font  
14 size of the Additional Language; and
- 15 c. The Warning Statement and the Additional Language shall be positioned in a manner  
16 that either: i) prevents both sets of language from being legible at the same time, or ii)  
17 ensures that the two sets of language are separated by a gap of at least 25% of the total  
18 length of the Product label.

19 Defendant shall, before implementing any Additional Language, provide to Plaintiff for his review  
20 exemplar template mock-ups demonstrating the language and placement of the Additional  
21 Language on the Products' individual unit packaging ("Template Mock-ups"). All such Template  
22 Mock-ups affirmatively approved by Plaintiff shall be deemed compliant with the requirements of  
23 this Paragraph 2.4.

24 **2.7 Modifications to Template Mock-ups.** For a period of ten (10) years following the  
25 entry of this Amended Consent Judgment, every new label or sticker bearing Additional Language  
26 that, insofar as either the language of the Additional Language or the placement of the Additional  
27 Language and Warning Statement is concerned, is different from any Product labels in use on  
28 April 2, 2012, or any previously approved Template Mock-up, will require Plaintiff's pre-

1 approval, as follows: Defendant will notify Plaintiff under the Notice provisions herein and  
2 provide Plaintiff with a Template Mock-up of any proposed new sticker or label incorporating  
3 Additional Language at least forty-five (45) days prior to the sale in California of the Product  
4 using the new sticker or label. Plaintiff shall provide a response within fifteen (15) days of  
5 receiving such new Template Mock-up by email. Plaintiff shall review the proposed new  
6 Template Mock-up in good faith, and shall not unreasonably withhold his consent thereto.

7 In the event that Plaintiff does not agree to the proposed new Template Mock-up, the new  
8 label or sticker shall not be used and the Parties shall meet and confer regarding any disputes  
9 within five (5) business days of Plaintiff's response, subject to Plaintiff's obligations to meet and  
10 confer in good faith and to refrain from unreasonably withholding his consent to the proposed new  
11 Template Mock-up. In the event that the Parties cannot resolve this dispute, Defendant may, by  
12 noticed motion filed in this action, seek an order from the Court allowing the proposed new  
13 Template Mock-up.

14 **2.8 Relief from Warning Requirements for Products Modified or Reformulated**  
15 *after Entry of This Amended Consent Judgment.* The Parties contemplate that, after this  
16 Amended Consent Judgment is entered and the Injunctive Provisions take effect, Defendant may  
17 reformulate or modify any or all of the Products, their recommended dosages, manufacturing  
18 processes, or their sources of ingredients in ways that may reduce the level of exposure to lead,  
19 such that a Proposition 65 warning for some or all of the Products may no longer be required under  
20 the Exposure Calculation. The Parties further acknowledge that the amount of lead in any of the  
21 Products may vary, depending on such factors as the formula, manufacturing processes or sources  
22 of ingredients. Accordingly, Defendant, at its option, may conduct further testing for any batch of  
23 any or all of the Products. If the results of such tests, when conducted in accordance with the  
24 methods set forth at Paragraphs 2.1 and 2.2 above, result in an Exposure Calculation for any  
25 Product, when conducted in accordance with the method at Paragraph 2.3 and 2.4 above, that does  
26 not exceed 0.5 micrograms per day, then the Injunctive Provisions set forth at Paragraph 2.5 shall  
27 not apply for such batch of such Product, provided that Defendant provides a copy of the test  
28 results for such Product to Plaintiff thirty (30) days prior to sale or shipment and informs Plaintiff

1 by letter that such Product will be sold or shipped for sale in California without the Warning  
2 Statement. Any disputes regarding the implementation of this Paragraph 2.8 shall be resolved  
3 pursuant to Paragraph 9.1 below.

4 **2.9 Clear and Reasonable Warnings For Products In the Stream of Commerce Prior**  
5 **to Effective Date of Consent Judgment.** Within ninety (90) days following the Effective  
6 Date of the Original Consent Judgment, Defendant was required to send a Wholesale Customer  
7 Notification Letter to each of its wholesale customers in California that purchased any of the  
8 Products from Defendant in the one hundred and eighty (180) days preceding the Effective Date of  
9 the Original Consent Judgment. The Wholesale Customer Notification Letter notified Defendant's  
10 wholesale customers regarding the warning requirements of Proposition 65 as they apply to each  
11 of the Products, on the basis of the Exposure Calculations described above, and provided each  
12 such customer with a sufficient supply of Warning Stickers to apply to all units of the Products  
13 then remaining in stock. An exemplar of the verbatim language of the Wholesale Customer  
14 Notification Letter is attached as **Exhibit C** to this Amended Consent Judgment.

15 **2.10 Clear and Reasonable Warnings For Products In The Stream Of Commerce**  
16 **Prior to April 2, 2012.** On or before the date that is thirty (30) days after the entry of the  
17 Amended Consent Judgment, Defendant shall send a copy of the Wholesaler Notification Letter  
18 attached as **Exhibit D** to each of its wholesale customers in California who purchased any of the  
19 Products from Defendant in the one hundred and eighty (180) days preceding the date of the letter.

20 **2.11 Ban On California Sales Of Products For Which Exposure Calculation**  
21 **Exceeds 15 Micrograms Per Day.** No Product subject to this Amended Consent Judgment may be  
22 sold or shipped by Defendant for sale in the State of California after April 2, 2012, if the Exposure  
23 Calculation for the Product, as determined pursuant to Paragraphs 2.3, 2.4 and 10.6 herein exceeds  
24 fifteen (15) micrograms/day.

25 **2.12 Accountant's Certification.** On or before July 1, 2009, Defendant was required to  
26 provide Plaintiff with a certification from Defendant's accountant stating that the two summary  
27 financial reports previously presented to Plaintiff by Defendant accurately summarize the  
28 information set forth in the accounting books and records presented to him by Defendant for his

1 review.

2           2.13 ***Defendant's Sworn Declaration.*** On or before July 1, 2009, Defendant was  
3 required to provide Plaintiff with a sworn declaration from an officer of Defendant, stating that the  
4 accounting books and records presented to Defendant's accountant by Defendant for his review  
5 and preparation of summary reports were true and correct copies of the actual books and records  
6 of Defendant, and that those records were maintained in the ordinary course of Defendant's  
7 business, and accurately reflect the financial position of Defendant at the times prepared.

8           2.14 ***Website Modification.*** On or before April 2, 2012, Defendant shall make a  
9 thorough review of its website and make a good faith effort to remove any and all misleading or  
10 inaccurate information relating to the presence of lead in its products, such as representations that  
11 the user of Defendant's products "will not be in any danger of consuming lead when he or she  
12 consumes any of our products."

13           3.       **CIVIL PENALTIES**

14           3.1 ***Civil Penalty Assessment Related to Original Consent Judgment.*** Defendant  
15 previously paid a civil penalty in the amount of \$80,000 pursuant to Health & Safety Code §  
16 25249.7(b) related to the Original Consent Judgment. Such payment was made to the "Law  
17 Offices of Andrew L. Packard Attorney-Client Trust Account;" Plaintiff remitted 75% of this  
18 amount to the State of California pursuant to Health & Safety Code § 25192.

19           3.2 ***Civil Penalty Assessment Related to Amended Consent Judgment.*** Defendant  
20 agrees to pay a civil penalty in the amount of \$45,000 pursuant to Health & Safety Code §  
21 25249.7(b). Such payment shall be made to the "Law Offices of Andrew L. Packard Attorney-  
22 Client Trust Account;" Plaintiff shall remit 75% of this amount to the State of California pursuant  
23 to Health & Safety Code § 25192.

24           3.3 ***Stipulated Penalties For Future Violations of This Agreement.*** Proposition 65  
25 provides for civil penalties of up to \$2500 per violation per day, pursuant to California Health &  
26 Safety Code § 25249.7. In the event that, after the Court's entry of the Amended Consent  
27 Judgment, Defendant violates Section 2 herein, the Parties stipulate that Defendant shall be liable  
28 for a stipulated civil penalty in the amount of \$5.00 per unit item sold by Defendant in California

1 or shipped for sale or use in California by Defendant in violation of this Amended Consent  
2 Judgment, unless Defendant's actual per unit sale price to the buyer was less than \$5.00, in which  
3 case the stipulated penalty shall be fifty percent (50%) of the sale price Defendant received from  
4 the relevant buyer for the Products at issue. Plaintiff may establish such violation(s) hereunder by  
5 a preponderance of the evidence upon a duly noticed motion in the San Francisco Superior Court  
6 and subject to the provisions of Paragraph 9.1 herein. Plaintiff shall remit 75% of this amount to  
7 the State of California pursuant to Health & Safety Code § 25249.12(b).

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

9 4.1 ***Reimbursement of Plaintiff's Fees and Costs Related to Original Consent***

10 **Judgment.** Defendant previously reimbursed Plaintiff in the amount of \$50,000 to defray  
11 Plaintiff's reasonable investigative, expert, consultant and attorneys' fees and costs, and all other  
12 costs incurred as a result of investigating and bringing the matter related to the Original Consent  
13 Judgment to Defendant's attention, and negotiating a settlement in the public interest. Such  
14 payment was paid to the "Law Offices of Andrew L. Packard Attorney-Client Trust Account" and  
15 remitted to the firm's address noted in the Notice provision below.

16 4.2 ***Reimbursement of Plaintiff's Fees and Costs Related to Amended Consent***

17 **Judgment.** Defendant agrees to reimburse Plaintiff in the amount of \$82,500 to defray Plaintiff's  
18 reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs  
19 incurred as a result of investigating and bringing this matter to Defendant's attention, and  
20 negotiating a settlement in the public interest. Such payment shall be payable to the "Law Offices  
21 of Andrew L. Packard Attorney-Client Trust Account" and remitted to the firm's address noted in  
22 the Notice provision below.

23 5. **MANNER OF PAYMENT**

24 5.1 ***Payment Schedule for Payments Related to Original Consent Judgment.*** Within

25 ten (10) days following the Effective Date of the Original Consent Judgment, Defendant was  
26 required to remit an initial payment of Twenty Thousand Dollars (\$20,000) ("Initial Payment")  
27 payable to the "Law Offices of Andrew L. Packard Attorney-Client Trust Account" and delivered  
28 to 319 Pleasant Street Petaluma, California 94952. The remaining One Hundred Ten Thousand

1 Dollars (\$110,000) enumerated in Paragraphs 3.1 and 4.1 above was required to be made in  
2 eighteen (18) equal monthly payments of \$6,111.11, the first payment was due thirty (30) calendar  
3 days after the Initial Payment was due, and each subsequent payment was paid on the same date of  
4 each month thereafter.

5           **5.2    *Payment Schedule for Payment Related to Amended Consent Judgment.*** Within  
6 five (5) business days following the Court’s approval of the Amended Consent Judgment,  
7 Defendant shall remit an initial payment of Sixty Thousand Dollars (\$60,000) payable to the “Law  
8 Offices of Andrew L. Packard Attorney-Client Trust Account” and delivered to 100 Petaluma  
9 Blvd. N., Suite 301, Petaluma, California 94952. The remaining \$67,500 enumerated in  
10 Paragraphs 3.2 and 4.2 above shall be made in three equal (3) monthly payments of \$22,500 each:  
11 the first payment shall be due thirty (30) calendar days after the Court’s approval of the Amended  
12 Consent Judgment, the second payment shall be due sixty (60) calendar days after the Court’s  
13 approval of the Amended Consent Judgment, and the third and final payment shall be due ninety  
14 (90) calendar days after the Court’s approval of the Amended Consent Judgment. Consistent with  
15 the terms of Original Consent Judgment’s Payment Schedule, in the event that any payment owed  
16 by Defendant under this Amended Consent Judgment is not remitted or post-marked on or before  
17 its due date, Defendant shall be deemed to be in default of its obligations under this Amended  
18 Consent Judgment. Plaintiff shall provide written notice to Defendant of any default; if Defendant  
19 fails to remedy the default within five (5) business days of such notice, then all future payments  
20 due hereunder shall become immediately due and payable, with the prevailing federal funds rate  
21 applying to all interest accruing on unpaid balances due hereunder, beginning on the due date of  
22 the funds in default.

23           **6.       RELEASE OF LIABILITY**

24           **6.1    *Release of Liability of Defendant.*** Plaintiff, acting on behalf of Plaintiff and on  
25 behalf of the general public, hereby releases from liability under Proposition 65 and waives all  
26 rights to institute or participate in, directly or indirectly, any claim or form of legal action against  
27 Defendant and its parents, subsidiaries, officers, directors, investors, affiliates, shareholders,  
28 employees, agents, attorneys, customers, divisions, subdivisions, predecessors, successors,

1 downstream distributors, downstream retailers, downstream customers, and upstream suppliers  
2 (including manufacturers of the Products and manufacturers of the raw materials of the Products)  
3 and any other person or entity in the course of doing business who distributes, markets or sells the  
4 Products sold to them through Defendant, brought under Proposition 65 concerning any alleged  
5 failure to provide adequate health hazard warnings for consumer exposures to lead or lead  
6 compounds in the Products, as to any Product sold in California on or before the entry of this  
7 Amended Consent Judgment. Nothing in this release is intended to apply to any occupational or  
8 environmental exposures arising under Proposition 65, or to any products either not set forth on  
9 Exhibit A to this Amended Consent Judgment or not deemed to be added to Exhibit A pursuant to  
10 Paragraph 10.4 or Paragraph 10.5 below.

11       6.2     ***Release of Liability of Plaintiff.*** Defendant waives all rights to institute any form of  
12 legal action against Mr. Gillett for all actions or statements made or undertaken by Mr. Gillett in  
13 the course of seeking enforcement of Proposition 65 against Defendant on or before the entry of  
14 this Amended Consent Judgment.

15       7.     **AMENDED CONSENT JUDGMENT**

16       7.1     ***Amended Consent Judgment.*** On or before April 6, 2012, Defendant shall submit  
17 this Amended Consent Judgment to be approved by the San Francisco Superior Court pursuant to  
18 California Health & Safety Code § 25249.7(f)(4).

19       7.2     ***Submission to the Attorney General.*** Upon execution of this Amended Consent  
20 Judgment by all Parties, and no later than April 6, 2012, Defendant shall notice a Motion for  
21 Approval & Entry of Amended Consent Judgment in the San Francisco Superior Court pursuant to  
22 Title 11, Cal. Code of Regs. § 3000, et seq. Plaintiff shall be afforded at least forty-eight (48)  
23 hours to review, modify and/or approve all of the motion papers. This motion shall be served  
24 upon all of the Parties to the Action and upon the California Attorney General's Office. In the  
25 event that the Court fails to approve and order entry of the judgment, this Amended Consent  
26 Judgment shall become null and void upon the election of any Party as to them and upon written  
27 notice to all of the Parties to the Action pursuant to the notice provisions herein. However,  
28 Defendant and Plaintiff shall use best efforts to support entry of this Amended Consent Judgment

1 in the form submitted to the Office of the Attorney General. If the Attorney General objects in  
2 writing to any term in this Amended Consent Judgment, the Parties shall use best efforts to resolve  
3 the concern in a timely manner and prior to the hearing on the motion to approve this Amended  
4 Consent Judgment. If the Parties cannot resolve an objection of the Attorney General, then  
5 Plaintiff and Defendant shall proceed with seeking entry of an order by the Court approving this  
6 Amended Consent Judgment in the form originally submitted to the Office of the Attorney  
7 General. If the Attorney General elects to file papers with the Court stating that the People shall  
8 appear at the hearing for entry of this Amended Consent Judgment so as to oppose entry of the  
9 Amended Consent Judgment, then a Party may withdraw from this Amended Consent Judgment  
10 prior to the date of the hearing, with notice to all Parties and the Attorney General, and upon such  
11 notice this Amended Consent Judgment shall be null and void.

12       **7.3 Stipulation as to Jurisdiction.** For purposes of this Amended Consent Judgment,  
13 the Parties stipulate that this Court has subject matter jurisdiction over the allegations in the  
14 Complaint. Defendant does not contest the exercise of jurisdiction by this Court to enter this  
15 Amended Consent Judgment as a full and final resolution of all causes of action pled against  
16 Defendant in the Complaint.

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

28       **7.5 Amendment To Complaint.** The 60-Day Notice issued on or about February 28,

1 2009 and attached hereto as part of Exhibit B has expired and no public prosecutors have  
2 commenced diligent prosecution against Defendant for such violations. Accordingly, as of the  
3 Effective Date of the Original Consent Judgment, the Complaint herein was deemed amended to  
4 include all violations described in that 60-Day Notice. Provided that, as of the date that is sixty  
5 (60) days after the issuance of the April 6, 2012 Notice of Violation that is attached hereto as part  
6 of Exhibit B, no public prosecutor has commenced diligent prosecution against Defendant  
7 pertaining to the violations described in the April 6, 2012 Notice, the Complaint herein shall be  
8 deemed amended as of that date to include allegations regarding the products at issue in the April  
9 6, 2012 Notice (the "Noticed Products").

10 8. **SEVERABILITY**

11 8.1 *Severability.* In the event that any of the provisions of this Amended Consent  
12 Judgment are held by a court to be unenforceable, the validity of the enforceable provisions shall  
13 not be adversely affected.

14 9. **ENFORCEMENT**

15 9.1 *Disputes and Enforcement.* The Parties agree that compliance with the  
16 Injunctive Provisions of this Amended Consent Judgment constitutes compliance with Proposition  
17 65 as to any Product distributed for sale or use in California ninety (90) days after the Effective  
18 Date of the Original Consent Judgment. In the event that a dispute arises regarding performance of  
19 any of the obligations under this Amended Consent Judgment or with respect to any of the  
20 provisions of this Amended Consent Judgment, the Parties shall meet and confer within twenty  
21 (20) days of receiving written notice of any alleged violation. In the event the Parties cannot  
22 resolve the dispute, this Amended Consent Judgment may be enforced pursuant to Code of Civil  
23 Procedure § 664.6 or any other valid provision of law. In addition, Plaintiff may, at his option,  
24 also file a new action based upon statutory violations wholly separate from the settlement  
25 agreement, occurring after the Effective Date, and subject to a new Notice of Violation. The  
26 prevailing party in any dispute regarding compliance with the terms of this Amended Consent  
27 Judgment shall be awarded its reasonable fees and costs incurred, in addition to any other relief  
28 otherwise ordered by the Court.

1           10.    **MODIFICATION**

2           10.1    ***Modification of Judgment – Grounds.*** The Parties acknowledge that new  
3 toxicological information or exposure assessments concerning hazardous substances are  
4 continuously becoming available, and that statutory and regulatory standards applicable to the  
5 Products may evolve in the future. Accordingly, the Parties agree that either Party may elect to  
6 file a motion pursuant to § 664.6 of the California Code of Civil Procedure, and under the  
7 conditions set forth below, move the Court for modification of the warning requirements set forth  
8 herein on the grounds that (a) they conflict with the applicable law or science concerning the  
9 Products, or (b) if a similar case is decided by a court, or settled without objection from the  
10 California Attorney General, and such decision or settlement endorses an allowance for  
11 comparable products, Defendant shall be entitled to seek judicial modification of this Amended  
12 Consent Judgment to allow the sale without Proposition 65 warning labels of Products with lead  
13 concentrations causing lead exposures of less than such allowance, plus the statutorily allowed  
14 level of 0.5 micrograms per day. Should Defendant seek such judicial modification of this  
15 Amended Consent Judgment, Plaintiff shall be free to oppose such modification to the extent he  
16 does not believe the products in the “similar case” are truly comparable to Defendant’s products.  
17 Any disputes regarding the issues set forth in this subparagraph shall be resolved in accordance  
18 with the procedures set forth in Paragraph 9.1 above.

19           10.2    ***Modification of Judgment – Procedure.*** In the spirit of cooperation and in the  
20 interests of minimizing the investigative, expert and attorneys’ fees and costs associated with a  
21 motion to amend this Amended Consent Judgment, the Parties agree to meet and confer in good  
22 faith as follows. Prior to filing a motion to amend the Amended Consent Judgment, the Party  
23 seeking to modify the Amended Consent Judgment shall first provide the non-moving Party and  
24 the California Attorney General’s Office with any legal or scientific data upon which the motion  
25 would rely. The non-moving Party and the California Attorney General’s Office shall be allowed  
26 a period of forty-five (45) days to review that data and provide the moving Party with its formal  
27 written response (the Attorney General’s Office’s failure to respond to this submission shall not be  
28 construed in any manner to reflect any particular view, on the part of the Attorney General’s

1 Office of this Consent Judgment or of the applicable law or science). The Parties then shall meet  
2 and confer within ten (10) days of the non-moving Party's written response. If, after meeting and  
3 conferring, the moving Party elects to proceed with a motion to amend this Amended Consent  
4 Judgment, it may do so with proper notice to the other Party and the Attorney General's Office as  
5 required under the California Code of Civil Procedure. Such a motion may be accompanied by  
6 scientific data, studies, written declarations, live testimony or discovery responses.

7           10.3 *Modification of Judgment Based on Modification or Reformulation of*  
8 *Products.* The Parties contemplate that Defendant, after carrying out the Injunctive Provisions set  
9 forth at Section 2 of this Amended Consent Judgment as to batches of the Products produced prior  
10 to the date of entry of this Amended Consent Judgment, may continue to conduct further testing in  
11 accordance with the methods set forth at Paragraphs 2.1 through 2.4 to generate Exposure  
12 Calculations for batches of any or all of the Products manufactured subsequently. If the results of  
13 such tests for two (2) consecutive batches for any Product result in Exposure Calculations that do  
14 not exceed 0.5 micrograms per day when such batches are produced three (3) or more months  
15 apart, then Defendant, at its option, may seek a modification of this Amended Consent Judgment  
16 to be relieved from complying with the warning requirement for such Product set forth at  
17 Paragraph 2.5, provided only that Defendant does not change the manufacturing process or source  
18 of ingredients for such Product. In seeking such a modification, the burden shall rest on Defendant  
19 to adduce clear and convincing evidence that the modification is warranted. Defendant shall  
20 produce, as part of its obligation to meet and confer pursuant to Paragraph 9.1 herein all test  
21 results concerning Proposition 65-listed chemicals in the Product(s) at issue and an exemplar of  
22 the Product. Plaintiff shall be allowed a period of forty-five (45) days to review that data and  
23 provide Defendant with its formal written response.

24           The Parties then shall meet and confer within ten (10) days of the non-moving party's  
25 written response. If, after meeting and conferring, Defendant elects to proceed with a motion to  
26 amend this Amended Consent Judgment, it may do so with proper notice to the other Party and the  
27 Attorney General's Office as required under the California Code of Civil Procedure. Such a  
28 motion may be accompanied by scientific data, studies, written declarations, live testimony or

1 discovery responses. Plaintiff agrees not to contest such a motion unless Plaintiff produces test  
2 results of its own, from tests conducted by EPA Method 6020A at an EPA-accredited laboratory,  
3 demonstrating that Defendant's test results are not valid.

4       10.4 *Modification of Judgment for New Products.* After June 1, 2012, Defendant may  
5 elect to add either a) new herbal product(s) not in existence as of April 2, 2012, or b) new Third-  
6 Party Products not sold by Defendant in California as of April 2, 2012 to this Amended Consent  
7 Judgment, provided that, before selling or shipping for sale or for use in California, Defendant  
8 shall comply with the Injunctive Provisions set forth at Section 2 with respect to such new  
9 product(s), as applicable. Such new product(s) shall then be deemed Products(s) pursuant to  
10 Paragraph 1.2 and, if applicable, shall also be deemed Third Party Products subject to Paragraph  
11 2.5(c), and shall be subject to all of the terms of this Amended Consent Judgment. Defendant shall  
12 provide Plaintiff with an annual updated list of new product(s) that Defendant shipped for sale or  
13 use in California in the preceding calendar year for which Defendant has ascertained that warnings  
14 are required under this Amended Consent Judgment.

15       10.5 *Modification of Judgment for Noticed Products.* Provided that, as of the date that  
16 is sixty (60) days after the service of the April 6, 2012 Notice of Violation, no public prosecutor  
17 has commenced diligent prosecution against Defendant pertaining to the violations alleged in the  
18 April 6, 2012 Notice with respect to the Noticed Products, the Noticed Product shall be deemed  
19 Products pursuant to Paragraph 1.2 and, if applicable, shall also be deemed Third Party Products  
20 subject to Paragraph 2.5(c), and shall be deemed added to Exhibit A to the Amended Consent  
21 Judgment, and shall be subject to all of the terms of this Amended Consent Judgment. Defendant  
22 shall comply with the Injunctive Provisions set forth at Section 2 with respect to the Noticed  
23 Product(s), as applicable.

24       10.6 *Warnings for Products Re-Tested By Plaintiff After Entry of this Amended Consent*  
25 *Judgment.* The Parties recognize that, after this Amended Consent Judgment is entered and the  
26 Injunctive Provisions take effect, Defendant has no continuing obligation to test Products that,  
27 based on the Exposure Calculation pursuant to Paragraphs 2.2 and 2.4 above, contain lead in an  
28 amount at or below 0.5 micrograms per day, such that no Proposition 65 warning is required for

1 the Products under this Amended Consent Judgment. The Parties further acknowledge that the  
2 amount of lead in any of the Products may vary, depending on such factors as the formula,  
3 manufacturing processes or sources of ingredients. Accordingly, if, after this Amended Consent  
4 Judgment is entered and the Injunctive Provisions take effect, Plaintiff conducts testing of any  
5 Product, which, when conducted in accordance with the methods set forth at Paragraphs 2.1 and  
6 2.2 above, results in an Exposure Calculation for any Product that, when conducted in accordance  
7 with the method at Paragraph 2.3 and 2.4 above, exceeds 0.5 micrograms of lead per day, then  
8 Plaintiff shall provide a copy of the laboratory test results for such Product to Defendant within  
9 thirty (30) days of learning of the result. As of the date that is thirty (30) days after Defendant's  
10 receipt of such test results ("Suspension Date"), Defendant shall either suspend all sales in  
11 California and no longer ship for sale or use in California any such Product, or apply Warning  
12 Stickers to any such Products sold by Defendant in California after the Suspension Date, unless  
13 before the Suspension Date Defendant provides a copy of a test result for such Product  
14 (undertaken after the entry of this Amended Consent Judgment) to Plaintiff demonstrating that the  
15 Exposure Calculation for the Product does not exceed 0.5 micrograms per day. Any disputes  
16 regarding the implementation of this Paragraph 10.6 shall be resolved pursuant to Paragraph 9.1  
17 above; however, during the pendency of the dispute, Defendant shall either suspend all of its sales  
18 in California and no longer ship for sale or use in California any such Product, or apply Warning  
19 Stickers to any such Products sold by Defendant in California after the Suspension Date.

20 (a) In the event that Defendant has not provided a test result for the Product to Plaintiff  
21 prior to the Suspension Date, Defendant shall be required to continue to provide the Warning  
22 Statement on the Product. Unless Warning Stickers are permitted on the Product pursuant to  
23 Paragraph 2.5(a) or 2.5(c) above, within one (1) year after the Suspension Date Defendant shall  
24 integrate the Warning Statement onto the label for the Product, consistent with the guidelines  
25 regarding the provision of warnings set forth in Paragraphs 2.5 through 2.7 above. The Parties  
26 agree that a violation of this Amended Consent Judgment does not occur when a Product initially  
27 tested at or below 0.5 micrograms of lead per day based on the Exposure Calculation pursuant to  
28 Paragraphs 2.2 and 2.4 above and therefore does not bear the Warning Statement, but is

1 subsequently determined by test results conducted after the entry of this Amended Consent  
2 Judgment to contain lead in an amount that exceeds 0.5 micrograms per day; in such instance, and  
3 where Defendant has not provided a test result to the contrary before the Suspension Date, the  
4 period of non-violation would terminate on the Suspension Date.

5 (b) In the event that Defendant has provided its own test result to Plaintiff prior to the  
6 Suspension Date, but the Parties, after meeting and conferring, cannot agree as to whether the  
7 Warning Statement is required, then Defendant shall provide the Warning Statement on the  
8 Product after the Suspension Date until either: (1) the Parties agree in writing otherwise; (2) the  
9 Court determines that the Warning Statement is not required; or (3) as provided under Paragraphs  
10 2.8 or 10.3 above. Unless Warning Stickers are permitted on the Product pursuant to Paragraph  
11 2.5(a) or 2.5(c) above, within one (1) year after the Suspension Date, Defendant shall integrate the  
12 Warning Statement onto the label for the Product, consistent with the guidelines regarding the  
13 provision of warnings set forth in Paragraphs 2.5 through 2.7 above. The Parties agree that a  
14 violation of this Amended Consent Judgment does not occur when a Product initially tested at or  
15 below 0.5 micrograms of lead per day based on the Exposure Calculation pursuant to Paragraphs  
16 2.2 and 2.4 above and therefore does not bear the Warning Statement, but is subsequently  
17 determined by test results conducted after the entry of this Amended Consent Judgment to contain  
18 lead in an amount that exceeds 0.5 micrograms per day; in such instance, and where Defendant has  
19 provided a test result to the contrary before the Suspension Date, the period of non-violation would  
20 terminate on the Suspension Date.

21 11. **GOVERNING LAW**

22 11.1 *Governing Law.* The terms of this Amended Consent Judgment shall be governed  
23 by the laws of the State of California.

24 12. **NOTICES**

25 12.1 *Notices.* All correspondence and notices required to be provided under this Consent  
26 Judgment shall be in writing and shall be sent by both Certified Return Receipt Mail and email  
27 addressed as follows:

28 All correspondence to Mr. Gillett shall be mailed and emailed to:

1 Stephen D. Gillett  
2 Post Office Box 170142  
3 San Francisco, CA 94117

4 Andrew L. Packard  
5 THE LAW OFFICES OF ANDREW PACKARD  
6 100 Petaluma Blvd. North, Suite 301  
7 Petaluma, California 94952

8 Required E-mails: Andrew@packardlawoffices.com; sdg3@comcast.net

9 All correspondence to Defendant shall be mailed to:

10 Yanlin Teegarden, Chief Executive Officer  
11 RON TEEGUARDEN ENTERPRISES, INC.  
12 315 Wilshire Boulevard  
13 Santa Monica, California 90401

14 With a copy to:

15 Trenton H. Norris, Esq.  
16 ARNOLD & PORTER LLP  
17 7th Floor  
18 Three Embarcadero Center  
19 San Francisco, California 94111

20 Required E-mails: Trent.Norris@aporter.com; yanlint@dragonherbs.com

21 13. **INTEGRATION AND MODIFICATION**

22 13.1 *Integration & Modification.* This Amended Consent Judgment, together with the  
23 Exhibits hereto and all approved Template Mock-Ups, which are specifically incorporated herein  
24 by this reference, constitutes the entire agreement between the Parties relating to the rights and  
25 obligations herein granted and assumed, and supersedes all prior agreements and understandings  
26 between the Parties. This Amended Consent Judgment may be modified only upon the written  
27 agreement of the Parties, or as otherwise provided herein.

28 14. **COUNTERPARTS**

14.1 *Counterparts.* This Amended 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 Amended Consent Judgment.

**DATED:** 4/2/2012 **BY:**   
Stephen D. Gillett

**DATED:** \_\_\_\_\_ **BY:** \_\_\_\_\_  
Yanlin 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
- D – Wholesaler Notification Letter

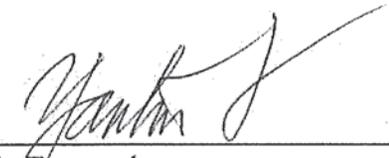
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15. **AUTHORIZATION**

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 Amended Consent Judgment.

**DATED:** \_\_\_\_\_ **BY:** \_\_\_\_\_  
Stephen D. Gillett

**DATED:** 4/2/2012 **BY:** \_\_\_\_\_  
  
Yanlin Teegarden  
Ron Teegarden Enterprises, Inc.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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- B – Notices of Violation
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