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7 METAGENICS, INC.

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

11 STEPHEN D. GILLETT, an individual,  
12 Plaintiff,  
13 v.  
14 METAGENICS, INC., a corporation,  
15 Defendant.

Case No. CGC-09-494987

**[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT METAGENICS, INC.**

18 This agreement (“Consent Judgment” or “agreement”) is entered into by and between  
19 STEPHEN D. GILLETT (“PLAINTIFF”) and METAGENICS, INC. (“METAGENICS” or  
20 “DEFENDANT”) to resolve all claims raised in the Complaints filed against Defendant in the  
21 above-captioned action. This Consent Judgment shall be effective upon entry by this Court.  
22 PLAINTIFF and METAGENICS (collectively “the Parties” and each individually a “Party”) agree  
23 to the terms and conditions set forth below.

24 WHEREAS, analysis of this general category of products, including but not limited to these  
25 Covered Products (as defined below), using inductively coupled plasma mass spectrometry reveals  
26 that there can be detectable lead in some production lots of such products, there can be variations in  
27 lead concentrations within a single lot of any particular product, there can be variation among  
28 different lots of the same product and, finally, there can be variation in lead levels among the

**[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT METAGENICS, INC.**

1 Covered Products.

2 WHEREAS, even with the use of good manufacturing practices, the Covered Products can  
3 still have detectable concentrations of lead.

4 WHEREAS, Plaintiff and Defendant dispute how exposure to the Covered Products is to be  
5 calculated, including the amount per eating occasion, how consumption episodes should be  
6 evaluated, and who the average users of the Covered Products may be.

7 WHEREAS, Plaintiff and Defendant dispute whether the existing warning or other text on  
8 the Covered Product labels satisfy the warning obligations of Proposition 65 (defined below).

9 WHEREAS, Defendant contends that the lead, if any is detectable, contained in the Covered  
10 Products is “naturally occurring” within the meaning of California Code of Regulations, Title 27,  
11 Section 25501.

12 WHEREAS, Plaintiff contends that none of the detectable lead Plaintiff alleges is in the  
13 Covered Products has been demonstrated to be “naturally occurring” within the meaning of  
14 California Code of Regulations, Title 27, Section 25501.

15 WHEREAS, Plaintiff and Defendant recognize and acknowledge that proving or disproving  
16 that any particular quantity of lead that may be contained in the Covered Products is naturally  
17 occurring would be extremely expensive and time-consuming, requiring the expenditure of resources  
18 out of proportion with any benefits to be derived from that process.

19 WHEREAS, the Consent Judgment in *Edgerton v. Canopco (dba Slim Fast foods Co.),*  
20 *Atkins Nutritionals, Inc., Metabolife International, Kashi Company, and Rexall Sundown,* Los  
21 Angeles Superior Court Case No. BC262906 (dated 12/19/03)<sup>1</sup> allows, inter alia, certain dietary  
22 supplement products to be sold in California without a warning, regardless of the concentration of  
23 lead in those products, provided that each covered defendant uses certain “best practices” in  
24 manufacturing its products and otherwise complies with the Consent Judgment.

25 WHEREAS, the Consent Judgment in *As you Sow v. Nature’s Way Products Inc.,* San  
26

27 <sup>1</sup> The Parties will provide courtesy copies of the consent judgments and 2001 letter from the Office of the Attorney  
28 General referenced in this Consent Judgment to the court reviewing the Motion to Approve Proposition 65 Consent  
Judgment to be filed after execution of this agreement by the Parties.

1 Francisco Superior Court Case No. CGC-03-422848 (filed 5/24/05) allows, *inter alia*, dietary  
2 supplement products containing a concentration of lead in the products of up to four (4) micrograms  
3 per day, assuming the product is used or consumed according to the defendant's consumer use  
4 instructions, to be sold in California without a warning, provided that each covered defendant  
5 complies with Consent Judgment terms.

6 WHEREAS, the Consent Judgment in *As You Sow v. Irwin Naturals, et al.*, San Francisco  
7 Superior Court Case No. CGC-04-429279 (filed 6/30/05) allows, *inter alia*, similar dietary  
8 supplement products containing a concentration of lead in the products of up to four (4) micrograms  
9 per day, assuming the product is used or consumed according to the defendant's consumer use  
10 instructions, to be sold in California without a warning, provided that each covered defendant  
11 complies with the Consent Judgment terms.

12 WHEREAS, the Consent Judgment in *As You Sow v. Threshold Enterprises, Ltd. Et al.*, San  
13 Francisco Superior court Case No. CGC-03-422847 (filed 9/8/05) allows, *inter alia*, similar dietary  
14 supplement products containing a concentration of lead in the products of up to four (4) micrograms  
15 per day, assuming the product is used or consumed according to the defendant's consumer use  
16 instructions, to be sold in California without a warning, provided that each covered defendant  
17 complies with the Consent Judgment terms.

18 WHEREAS, the Consent Judgment in *As You Sow v. Botanical Laboratories, Inc. et al.*, San  
19 Francisco Superior court Case No. CGC-04-429563 (filed 5/23/05) allows, *inter alia*, similar dietary  
20 supplement products containing a concentration of lead in the products of up to four (4) micrograms  
21 per day, assuming the product is used or consumed according to the defendant's consumer use  
22 instructions, to be sold in California without a warning, provided that each covered defendant  
23 complies with the Consent Judgment terms.

24 WHEREAS, Defendant contends that it should be provided a naturally occurring allowance  
25 of up to one (1) part per million (1000 ppb) of lead for any cocoa powder found in Covered  
26 Products, pursuant to the letter dated September 28, 2001 from the California Office of the Attorney  
27 General to Roger Lane Carrick and Michele Corash.

1 WHEREAS, Defendant contends that it should be provided a naturally occurring allowance  
2 for lead that may be present in calcium and other ingredients encompassed by the Consent Judgment  
3 in *People v. Warner-Lambert Co. et al.*, San Francisco Superior Court Case No. CGC-00-984503  
4 (filed 11/13/1998 and modified on 07/15/11), which allows, *inter alia*, a naturally occurring  
5 allowance of 0.8 micrograms of lead per 1000 milligrams of calcium, and naturally occurring  
6 allowances of 0.4 mcg/g for ferrous fumarate, 8.0 mcg/g for zinc oxide, 0.4 mcg/g for magnesium  
7 oxide, 0.332 mcg/g for magnesium carbonate, 0.4 mcg/g magnesium hydroxide, 0.8 mcg/g zinc  
8 gluconate, and 1.1 mcg/g potassium chloride. In 2012 the People afforded the same naturally  
9 occurring allowances to dozens of defendants, including Defendant, in a series of consent judgments  
10 resolving a case styled *People v. 21<sup>st</sup> Century Healthcare, Inc. et al.*, Alameda Superior Court Case  
11 No. RG08426937.

12 WHEREAS, Defendant contends that it is unfairly prejudicial to subject different businesses  
13 within the same competitive marketplace to different lead warning thresholds pursuant to  
14 Proposition 65.

15 WHEREAS, Plaintiff contends that marketplace uniformity does not exempt Defendant from  
16 compliance with Proposition 65 warning standards.

17 WHEREAS, while all Parties desire to achieve the lowest level of lead in the Covered  
18 Products that is reasonably feasible, Defendant asserts that some time is needed to evaluate,  
19 investigate, reformulate, re-label, alter manufacturing practices or take other measures to achieve  
20 such extremely low lead levels in the Covered Products.

## 21 1. INTRODUCTION

22 1.1 PLAINTIFF is an individual dedicated to, among other causes, the protection of the  
23 environment, the promotion of human health, the improvement of worker and consumer rights,  
24 environmental education, corporate accountability and reduction or elimination of lead in the food  
25 supply chain.

26 1.2 METAGENICS is a Delaware corporation that sells in California certain dietary  
27 supplements (defined below as the "COVERED PRODUCTS"), all of which Plaintiff alleges  
28

1 contain lead, a chemical regulated by the State of California as known to cause cancer or  
2 reproductive toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986  
3 (“Proposition 65”), California Health and Safety Code § 25249.5 *et seq.*; Title 27, California Code of  
4 Regulations, § 25000 *et seq.* The COVERED PRODUCTS initially covered by this Consent  
5 Judgment are set forth on **Exhibit A** hereto. Products not appearing on Exhibit A are not covered by  
6 the injunctive provisions or the release of liability set forth herein except predecessor, successor or  
7 future new COVERED PRODUCTS as defined in this Section 1.2 are covered. All forms, sizes,  
8 packaging, labeling of the COVERED PRODUCTS are included in this agreement. Predecessor  
9 and, in the future, successor products to the COVERED PRODUCTS are also COVERED  
10 PRODUCTS.<sup>2</sup> In the future, new products which would have been Covered Products if they had  
11 been made today also will be deemed COVERED PRODUCTS, including all new dietary  
12 supplements manufactured directly by, or for, Defendant and sold in the form of tablets, pills,  
13 powders, liquids, capsules, gel caps and which are branded with Defendant’s label, or co-branded by  
14 Defendant and another party, or labeled by a third party but are the same product as a product  
15 branded or co-branded with Defendant’s name or label. New covered products shall not include:  
16 (a) foods, if any, which are not dietary supplements; (b) meal replacement products or bars; (c)  
17 ready-to-drink liquids or ready-to-mix powders intended to constitute beverages; (d) dietary  
18 supplements which are custom formulated for a customer of Defendant or; (e) products subject to the  
19 consent judgment resolving *People v. 21<sup>st</sup> Century Healthcare, Inc. et al.*, Alameda Superior Court  
20 Case No. RG08426937.

21  
22  
23 <sup>2</sup> The term “successor products” refers to Covered Products: (a) which may be re-labeled, or (b) which may have  
24 modified formulations but still sold under the same name, or (c) which may include new ingredients or substitute  
25 ingredients but still sold under the same name, or (d) which may be labeled as “new” or “improved” or “now with more  
26 [insert ingredient]” or words of similar import or effect, or (e) which may be manufactured by a different process or by a  
27 different supplier, or (f) which may be the same formulation but sold with a different label or a new name. The term  
28 “predecessor products” refers to the prior versions of current Covered Products: (a) which had different labels, or (b)  
which may have had modified formulations but still were sold under the same name, or (c) which may have included  
different ingredients or substitute ingredients but were still sold under the same name, or (d) which may have been  
labeled without the words “new” or “improved” or “now with more [insert ingredient]” or words of similar import or  
effect, or (e) which may have been manufactured by a different process or by a different supplier, or (f) which may have  
been the same formulation but sold with a different label or name.

1           **1.3**       If Plaintiff has a question whether a product is a COVERED PRODUCT, Plaintiff  
2 shall inquire in writing of Defendant and Defendant shall verify whether a product is a COVERED  
3 PRODUCT, promptly, and in no event later than two (2) weeks after the request.

4           **1.4**       The COVERED PRODUCTS have been imported, manufactured, distributed and/or  
5 sold by METAGENICS for use in California.

6           **1.5**       On February 27, 1987, the State of California officially listed the chemical lead as a  
7 chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code  
8 § 25249.8.

9           **1.6**       On October 1, 1992, the State of California officially listed the chemical lead as a  
10 chemical known to cause cancer, pursuant to California Health and Safety Code § 25249.8.

11           **1.7**       On August 31, 2009, PLAINTIFF served METAGENICS and each of the appropriate  
12 public enforcement agencies with documents entitled “60-Day Notice” that provided  
13 METAGENICS and the public enforcement agencies with notice that METAGENICS was in  
14 violation of Proposition 65 for failing to warn the purchasers and individuals using some of the  
15 COVERED PRODUCTS, and that use of these COVERED PRODUCTS exposes them to lead, a  
16 chemical known to the State of California to cause reproductive toxicity. A copy of this notice is  
17 attached hereto as **Exhibit B**.

18           **1.8**       PLAINTIFF filed a Complaint entitled *Stephen D. Gillett v. Metagenics, Inc.*, Case  
19 Number CGC-09-494987 (the “Action”) in San Francisco Superior Court alleging violations of  
20 Proposition 65.

21           **1.9**       On March 8, 2012, PLAINTIFF again served METAGENICS and each of the  
22 appropriate public enforcement agencies with documents entitled “60-Day Notice” that provided  
23 METAGENICS and the public enforcement agencies with notice that METAGENICS was in  
24 violation of Proposition 65 for failing to warn the purchasers and individuals using some of the  
25 COVERED PRODUCTS that the use of these COVERED PRODUCTS exposed them to lead, a  
26 chemical known to the State of California to cause reproductive toxicity. A copy of this notice is  
27 attached hereto as **Exhibit C**.

1           **1.10** On March 26, 2013 PLAINTIFF served METAGENICS with another “60 Day  
2 Notice” that provided METAGENICS and the public enforcement agencies with notice that  
3 METAGENICS was in violation of Proposition 65 for failing to warn the purchasers and individuals  
4 using some of the COVERED PRODUCTS that the use of these COVERED PRODUCTS exposed  
5 them to lead, a chemical known to the State of California to cause reproductive toxicity. A copy of  
6 this notice is attached hereto as **Exhibit D**.

7           **1.11** The First Amended Complaint in the Action was filed on October 15, 2010. The  
8 Second Amended Complaint was filed on May 14, 2012. The operative Third Amended Complaint  
9 was filed on September 28, 2012. The Third Amended Complaint will be amended, and the Fourth  
10 Amended Complaint shall be the operative complaint and Action, as of sixty five (65) days from  
11 March 26, 2013, provided no public prosecutor commences and begins diligently prosecuting an  
12 action against METAGENICS before that date respecting COVERED PRODUCTS listed in the  
13 March 26, 2013 “60 Day Notice.” PLAINTIFF agrees that it will not seek judicial approval of this  
14 agreement until at least sixty five (65) days after March 26, 2013. If a public prosecutor were to  
15 commence an action respecting the COVERED PRODUCTS listed in the March 26, 2013 “60 Day  
16 Notice” before this agreement is approved by the Court, then either Party, in its sole discretion, may  
17 declare this agreement null and void and it shall be deemed null and void *ab initio*.

18           **1.12** The Action was brought against METAGENICS by PLAINTIFF in the public interest  
19 at least sixty (60) days after PLAINTIFF provided notice of the Proposition 65 violations to  
20 METAGENICS and the appropriate public enforcement agencies and none of the public  
21 enforcement agencies had commenced and begun diligently prosecuting an action against  
22 METAGENICS for such violations.

23           **1.13** For purposes of this Consent Judgment, the Parties stipulate that this Court has  
24 subject matter jurisdiction over the allegations contained in the Action.

25           **1.14** The Parties enter into this Consent Judgment to settle disputed claims between them  
26 and to avoid prolonged litigation. By execution of this Consent Judgment, METAGENICS does not  
27 admit any violations of Proposition 65, or any other law or standard applicable to warning or  
28

1 disclosure concerning the import, manufacture, distribution and/or sale of the COVERED  
2 PRODUCTS. Nothing in this Consent Judgment shall be construed as an admission by any Party of  
3 any fact, issue of law, conclusion of law, or violation of law, nor shall compliance with this Consent  
4 Judgment constitute or be construed as an admission by any Party of any fact, issue of law,  
5 conclusion of law, or violation of law.

6       **1.15** Except as expressly provided herein, nothing in this Consent Judgment shall  
7 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or further  
8 legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,  
9 responsibilities and duties of the Parties under this Consent Judgment.

10 **2. INJUNCTIVE PROVISIONS**

11 **2.1 Provision of Clear and Reasonable Proposition 65 Warnings.**

12       **2.1.1.** When required under Section 2.2, METAGENICS shall permanently cease sales of,  
13 and no longer ship for sale or use in California, any of the COVERED PRODUCTS (as defined in  
14 Sections 1.2 and 1.3, above) unless each individual unit of such COVERED PRODUCT bears the  
15 following warning statement on its label or attached to or affixed to the individual unit or the  
16 packaging (including a hang tag):

17       **WARNING:** This product contains lead, a chemical known to the State of  
18 California to cause birth defects or other reproductive harm.

19 Additionally, Metagenics in its sole discretion may alter the warning text to provide for warnings to  
20 more than one listed chemical under Proposition 65, such that the text may read as follows:

21       **WARNING:** This product contains a chemical [chemicals] known to the State of  
22 California to cause birth defects or other reproductive harm.

23 Metagenics may at its option use the phrase “a chemical” or the word “chemicals” and when  
24 warranted the phrase “cancer, birth defects or other reproductive harm” may be substituted for  
25 “birth defects or other reproductive harm.” The warning statement shall be prominent and displayed  
26 on the unit packaging of each COVERED PRODUCT with such conspicuousness, as compared with  
27 other words, statements, or designs so as to render it likely to be read and understood by an ordinary  
28 individual purchasing or using the COVERED PRODUCT.



1  
2                   **2.1.2 Mail Order Sales.**

3                   For any mail order sales of COVERED PRODUCTS made by METAGENICS to a consumer  
4 in California, the clear and reasonable warning language required under Section 2.1 of this Consent  
5 Judgment shall apply; also, any transmission method for warnings authorized under Section 2.1 of  
6 this Consent Judgment shall apply.

7                   **2.1.3 Internet Sales.**

8                   For any internet sales of COVERED PRODUCTS made by METAGENICS to a consumer in  
9 California, the clear and reasonable warning language required under Section 2.1 of this Consent  
10 Judgment shall apply; however, Metagenics may, at its option, transmit such warnings in any one or  
11 more of the following forms: (a) on the same page upon where the COVERED PRODUCT is  
12 displayed or referenced; or (b) on the same page as the order form for the COVERED PRODUCT;  
13 or (c) on the same page as the price for any COVERED PRODUCT; or (d) in a dialogue box which  
14 appears when a California address for delivery is provided by the consumer, so long as the dialogue  
15 box appears prior to the completion of the transaction; or (e) on the COVERED PRODUCT label or  
16 elsewhere directly affixed to or attached to the COVERED PRODUCT or its packaging (including a  
17 hang tag).

18                   **2.1.4** Any changes to the text or format of the warning language other than as set

19 forth in Section 2.1.1 shall be made only after Court approval. METAGENICS shall first request  
20 any such change in the text or format of the warnings and if: (a) PLAINTIFF or the Attorney  
21 General objects, or (b) neither PLAINTIFF nor the Attorney General responds to that request within  
22 ninety (90) days, then METAGENICS may move the Court via noticed motion to modify the  
23 Consent Judgment. If the Attorney General approves the requested changed and PLAINTIFF does  
24 not respond to the requested change within ninety (90) days, the requested change shall be deemed  
25 to have been approved by both the Attorney General and PLAINTIFF.

26                   **2.2 When Warnings Are Required.** Warnings shall be required under Section 2.1 for

27 COVERED PRODUCTS beginning on January 1, 2014 only under the follow circumstances:

- 28                   a) for COVERED PRODUCTS imported, or manufactured, or distributed or sold by

1 METAGENICS after January 1, 2014; and

2           b) if exposure to lead in a daily dose of a COVERED PRODUCT exceeds 2.90 ug/day,  
3 assuming consumer use of the Covered Product in accordance with the label dose recommendation;  
4 provided, however, if the label dose recommendation includes a range of doses, then the mid-point  
5 of the range shall be the assumed dose; provided, further, that if the label does not include a dose  
6 recommendation then the dose or amount set forth on the supplement facts panel shall be the  
7 assumed dose for purposes of this Consent Judgment; and

8           c) in determining the exposure level above in Section 2.2(a), DEFENDANT may  
9 exclude the amounts of the naturally occurring lead for certain ingredients, as set forth in *People v.*  
10 *21<sup>st</sup> Century Healthcare, Inc. et al.*, Alameda Superior Court Case No. RG08426937, to which  
11 METAGENICS is a party, if such ingredients also are used in the COVERED PRODUCTS.

12           **2.3 Monitoring Program.**

13           (a) METAGENICS shall undertake a lead monitoring program. The lead monitoring  
14 program shall include laboratory testing of each COVERED PRODUCT, including testing on or  
15 before September 1, 2013 for currently manufactured, distributed or sold COVERED PRODUCTS.  
16 Successor or new<sup>3</sup> COVERED PRODUCTS shall be tested before being distributed or sold to  
17 California consumers. Measures undertaken to comply with state or federal Food, Drug and  
18 Cosmetic Act obligations, and obligations under other consent judgments under Proposition 65, may  
19 be included as part of the monitoring program under this Consent Judgment.

20           (b) A presumptive level of lead in any COVERED PRODUCT for any purpose under this  
21 Consent Judgment shall be established if METAGENICS conducts, or has conducted on its behalf,  
22 testing of a minimum of three (3) and a maximum of twelve (12) samples (at METAGENICS'  
23 discretion) from different lots or bulks (if different lots or bulks are available), or a minimum of one  
24 sample which consists of a composite of at least three (3) test specimens if at least three (3) lots or  
25 bulks are not available, which comprise the subject COVERED PRODUCT, using Method AOAC

26 \_\_\_\_\_  
27 <sup>3</sup> Metagenics may, but is not obligated to, test or arrange for testing of predecessor Covered Products if samples or  
28 retains are available.

1 993.14 (Elements by ICPMS) and calculates the arithmetic mean (average) of the samples so tested  
2 (the "Presumptive Level"). The initial Presumptive Levels under this Consent Judgment shall be  
3 based on test data obtained between September 1, 2012 and September 1, 2013. Subsequent  
4 Presumptive Levels for the COVERED PRODUCTS shall be set on an ongoing basis as new test  
5 data is obtained. METAGENICS shall be entitled to rely on the Presumptive Level of lead for all  
6 purposes of this Consent Judgment, except as provided in Section 2.3(d) below.

7 (c) METAGENICS shall deliver a summary table of the Presumptive Level lead test  
8 results to PLAINTIFF by October 1, 2013 based on data and information obtained between  
9 September 1, 2012 and September 1, 2013. The table shall include the Presumptive Level and the  
10 number of test samples on which the Presumptive Level is based. This table shall remain  
11 confidential, PLAINTIFF shall not disclose the results to any person without the prior written  
12 consent of DEFENDANT, and the results of the table shall be used solely for purposes of monitoring  
13 compliance under this Consent Judgment; provided, however, that in the event of a dispute over lead  
14 levels in a COVERED PRODUCT the Parties agree that the Presumptive Level of the product in  
15 dispute (but not the table itself) may be revealed to the Court to the extent necessary to resolve the  
16 dispute and to enforce this Consent Judgment.

17 (d) PLAINTIFF shall not allege a violation of this Consent Judgment respecting a failure  
18 to warn unless PLAINTIFF has obtained at least three (3) valid test results, and the arithmetic mean  
19 (average) of PLAINTIFF'S results documents a failure to warn under this Consent Judgment. Then  
20 the Parties shall meet and confer. In the event of a dispute between the Parties as to whether there is  
21 a failure to warn under this Consent Judgment, at least three (3) additional samples shall be tested at  
22 a commercial laboratory acceptable to all Parties. The determinative level of lead shall be the  
23 arithmetic mean (average) of all of the samples tested, including the test results PLAINTIFF has  
24 obtained, DEFENDANT'S existing results obtained under the ongoing lead monitoring program,  
25 and any additional results obtained as a result of testing pursuant to the dispute resolution process of  
26 this Section 2.3(d) (the "Determinative Level"). The Determinative Level of lead shall be the level  
27 evaluated to determine compliance with the obligations of this Consent Judgment from and after the  
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1 date the Determinative Level is established and the Determinative Level then shall replace the  
2 Presumptive Level for the subject COVERED PRODUCT. The Determinative Level for a given  
3 COVERED PRODUCT may be established at any time and the Parties expressly contemplate that in  
4 the event of a dispute regarding the determinative level, METAGENICS shall be afforded an  
5 opportunity to supplement the existing test data and information on hand.

6 **2.4 Limitation on Sales.** METAGENICS shall not sell any COVERED PRODUCT,  
7 even with a warning under Sections 2.1.1. – 2.1.4., to a California consumer if the exposure to lead  
8 in a daily dose as determined under Sections 2.2 and 2.3 exceeds 12 ug/day.

9 **2.5 Ongoing Compliance with Proposition 65.** As of the date of entry of this Consent  
10 Judgment, compliance with this Consent Judgment shall constitute compliance with Proposition 65  
11 respecting lead in any COVERED PRODUCT, regardless of when such COVERED PRODUCT is  
12 or was manufactured, distributed or sold by METAGENICS or by any other person.

### 13 **3. CIVIL PENALTIES**

14 **3.1 Civil Penalty Assessment.** METAGENICS shall pay a civil penalty in the amount of  
15 \$65,000.00, pursuant to Health & Safety Code § 25249.7(b). PLAINTIFF shall remit 75% of this  
16 amount to the State of California pursuant to Health & Safety Code § 25249.12(c)(1).

### 17 **4. REIMBURSEMENT OF FEES AND COSTS**

18 **4.1 Reimbursement of PLAINTIFF'S Investigative, Expert and Legal Fees and**  
19 **Costs.** METAGENICS shall reimburse PLAINTIFF in the amount of \$255,000.00 for costs of suit,  
20 including attorneys' fees, incurred in the Action in full and complete satisfaction of PLAINTIFF'S  
21 claims and PLAINTIFF expressly waives the right, if any, to receive additional sums from  
22 METAGENICS.

### 23 **5. PAYMENT OBLIGATIONS**

24 **5.1** METAGENICS shall pay the sums due under Sections 3.1 and 4.1 within fifteen  
25 court days after the date on which this judgment is entered by the Court. Such sums shall be made  
26 payable to "Law Office of Andrew L. Packard Attorney-Client Trust Account." PLAINTIFF and its  
27 counsel shall cooperate by providing METAGENICS with any wiring instructions, taxpayer  
28

1 identification information, and other information required to facilitate the payment.

2           **5.2** In the event that any payment owed to PLAINTIFF under this Consent Judgment is  
3 late, METAGENICS shall be deemed to be in default of its obligations under this Consent Judgment.  
4 PLAINTIFF shall provide written notice to METAGENICS of any default. If METAGENICS fails  
5 to remedy its default within two (2) business days of such notice, interest shall accrue on any unpaid  
6 balance at the prevailing federal funds rate.

7           **5.3** If the Office of the Attorney General files one or more objections to this Consent  
8 Judgment with the Court, PLAINTIFF'S counsel shall retain all funds tendered under this Consent  
9 Judgment in a client trust account and not disburse them until the later of: a) the time period for an  
10 appeal by the Attorney General has lapsed or b) if the Attorney General files an appeal, until the  
11 appeal is concluded. If a higher court rules some or any part of this Consent Judgment is void, or  
12 otherwise invalidates the whole or any part, or remands the matter for further proceedings before this  
13 Court, then within 15 day after the date such determination is deemed final PLAINTIFF'S counsel  
14 shall refund from its client trust account all sums originally paid to METAGENICS.

15 **6. RELEASE OF LIABILITY**

16           **6.1 Release of Liability of METAGENICS.** PLAINTIFF, on his own behalf, and in the  
17 public interest, waives, releases, and discharges all rights to institute any form of legal action against  
18 METAGENICS, its officers, directors, employees, attorneys, representatives, parents, subsidiaries,  
19 affiliates, divisions and subdivisions, upstream suppliers, distributors, wholesalers, retailers or other  
20 sellers, whether under Proposition 65 or any other law or standard applicable to warning or  
21 disclosure concerning the import, manufacture, distribution and/or sale of the COVERED  
22 PRODUCTS based upon METAGENICS', or any other person's, alleged failure to warn, within the  
23 meaning of Proposition 65, about exposure to lead and lead compounds contained in any of the  
24 COVERED PRODUCTS sold by METAGENICS or by any other person on or before the entry of  
25 this Consent Judgment.

26           **6.2 Release of Liability of PLAINTIFF.** METAGENICS releases and waives all rights  
27 to institute any form of legal action against PLAINTIFF, for all actions or statements made or  
28



1 amendment, unless otherwise so stipulated by the Parties or their counsel. METAGENICS agrees to  
2 support the motion to approve this Consent Judgment in full.

3 **9. ENFORCEMENT, MODIFICATION, DISPUTE RESOLUTION**

4 **9.1 Enforcement.** In the event that a dispute arises with respect to any of the provisions  
5 of this Consent Judgment, the Parties shall meet and confer within twenty (20) days after either Party  
6 receives written notice of an alleged violation of this Agreement from the other Party. In the event  
7 the Parties cannot resolve the dispute, this Consent Judgment may be enforced pursuant to Code of  
8 Civil Procedure § 664.6 or any other valid provision of law. The prevailing party in any dispute  
9 regarding compliance with the terms of this Consent Judgment shall be awarded its reasonable fees  
10 and costs incurred, in addition to any other relief ordered by the Court.

11 **9.2 Modification of Judgment – Procedure.** This Consent Judgment may be modified  
12 only by a Court order approving a noticed Motion served on all Parties and the Attorney General.

13 **9.3 Dispute Resolution.** In the event of a dispute, the Parties shall first meet and confer  
14 in good faith and attempt to resolve the matter through negotiation. The Parties agree to meet and  
15 confer within thirty (30) days of the date a Party notifies the other Party in writing of a dispute  
16 hereunder. The Parties shall resolve the dispute within thirty (30) days of the date they meet and  
17 confer or, if they do not resolve the issue, then any Party may move the Court via a noticed motion  
18 (including service on the Office of the Attorney General) for such resolution as is authorized under  
19 this Consent Judgment or applicable law. The prevailing party in a dispute heard by the Court may  
20 request the Court award attorney's fees and costs, and the Court may award such fees and costs in its  
21 discretion.

22 **10. GOVERNING LAW**

23 **10.1 Governing Law.** The terms of this Consent Judgment shall be governed by the laws  
24 of the State of California.

25 **11. NOTICES**

26 **11.1 Notices.** All correspondence and notices required to be provided under this Consent  
27 Judgment shall be in writing and shall be sent by an overnight courier service with a tracking system  
28

1 to verify delivery and addressed as follows:

2 All correspondence to PLAINTIFF shall be mailed to:

3 Mr. Stephen D. Gillett  
4 P.O. Box 170142  
5 San Francisco, CA 94117

With a copy to:

Andrew L. Packard, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North  
Suite 301  
Petaluma, CA 94952

6 All correspondence to METAGENICS shall be mailed to:

7 Attn: General Counsel  
8 Metagenics  
9 100 Avenida La Pata  
10 San Clemente, CA 92673-6305

With a copy to:

Judith M. Praitis, Esq.  
Sidley Austin LLP  
555 West Fifth Street, Suite 4000  
Los Angeles, CA 90013

11 Courtesy notification by e-mail is allowed, but the date of receipt shall be the date of delivery.

## 12. INTEGRATION AND MODIFICATION

12 **12.1 Integration & Modification.** This Consent Judgment, together with the Exhibits  
13 hereto which are specifically incorporated herein by this reference, constitutes the entire agreement  
14 between the Parties relating to the rights and obligations herein granted and assumed, and supersedes  
15 all prior agreements and understandings between the Parties. This Consent Judgment may be  
16 modified by any procedure provided by law for the modification of judgments.

## 17. COUNTERPARTS

18 **13.1 Counterparts.** This Consent Judgment may be executed in counterparts, each of  
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
20 the same document.

## 21. AUTHORIZATION

22 **14.1 Authorization.** The undersigned are authorized to execute this Consent Judgment on  
23 behalf of their respective parties and have read, understood, and agree to all of the terms and  
24 conditions of this Consent Judgment.

25 //

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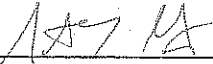
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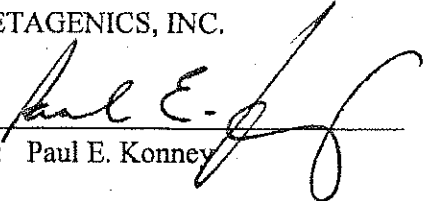


1 **IT IS SO STIPULATED:**

2  
3 DATED: 3/29/2013

STEPHEN D. GILLETT  
  
By: Stephen D. Gillett

4  
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6  
7 DATED: 21 March 2013

METAGENICS, INC.  
  
By: Paul E. Konney

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13 **IT IS SO ORDERED:**

14 DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable John E. Munter  
Judge of the Superior Court

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21 **INDEX OF ATTACHED EXHIBITS**

- 22 EXHIBIT A - Product List
- 23 EXHIBIT B - Notice of Proposition 65 Violation dated August 31, 2009
- 24 EXHIBIT C - Notice of Proposition 65 Violation dated March 8, 2012
- 25 EXHIBIT D - Notice of Proposition 65 Violation dated March 26, 2013

1  
2 **Exhibit A**

3 All forms, sizes, packaging, labeling (e.g., tablets, pills, powders, liquids, capsules, gel caps) of:

4 **PRODUCTS**

5 C-500 Methoxyflavone™
6 Adrenogen®
7 Adreset®
8 AdvaClear®
9 Andrographis Plus®
10 Azeo-Pangen™
11 Azeo-Pangen™ Extra Strength
12 Benesom®
13 BifoViden ID®
14 BioSom® (cherry flavored)
15 Black Cohosh Plus®
16 CandiBactin-AR®
17 CandiBactin-BR®
18 Celapro®
19 Chasteberry Plus®
20 Cholarest SC®
21 ChondroCare® with MSM
22 Chromium Picolinate
23 CogniSure®
24 Concentrated Ultra Prostagren®
25 Coratin™
26 CoQ10 ST-100™
27 CoQ10 ST -200™
28 Cortico-B5B6®
C-Ultratabs™
D <sub>3</sub> 1000™
D <sub>3</sub> 2000™ Complex
D <sub>3</sub> 5000™ (formerly IsoD 3 2000)
D <sub>3</sub> Liquid™
E Complex 1:1™
E-400 Selenium™
EC Matrixx®

[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT METAGENICS, INC.

1	Echinacea Synergy™
2	Endefen®
3	Energenics®
4	Essential Defense®
5	EstroFactors®
6	Estrovera™
7	Exhilarin®
8	Fem EstroPlex®
9	Fem Premenstrual™
10	Fenugreek Plus®
11	GinkgoRose™
12	Gluco Factors™
13	Glucorest®
14	Glucosamine Sulfate
15	Glucosamine Sulfate 750™
16	GlutaClear™
17	Glutagenics®
18	Immucore®
19	Inflavonoid®
20	Inflavonoid Intensive Care®
21	Insinase®
22	Intesol® <b>Enteric coated</b>
23	Juicy Fruit-C™
24	Kaprex® AI
25	Kaprex®
26	LactoViden ID®
27	L-Carnitine
28	Licorice Plus®
29	Lipotain®
30	Lumina®
31	Meta I-3-C®
32	Meta Lipoate® 300
33	Metagest®
34	MetalloClear®
35	Meta-Sitosterol™ 2.0

1	Metazyme®
2	Mycoferon®
3	Mycotaki®
4	NanoCell-Q™
5	Nazanol™
6	Niatain®
7	NuSera®
8	NutraGems™ CoQ10 300
9	NutraGems™ EPA-DHA 250
10	OmegaGenics™ Evening
11	Primrose Oil (formerly
12	MetaEPO)
13	OmegaGenics™ GLA 240
14	(formerly GLA Forte®)
15	Ostera®
16	Oxygenics®
17	Perimine®
18	PhytoComplete®
19	Phytoganix®
20	Probioplex®
21	Probioplex® Intensive Care
22	Protrypsin®
23	Selestro®
24	Serenagen®
25	Silymarin 80™
26	Sinuplex®
27	SpectraSoy®
28	Spectrazyme®
	SuperGarlic 6000®
	Testralin®
	Thyrosol®
	Thyro-Vital™ (Ethical
	Nutrients brand)
	Tran-Q®
	Tribulus Synergy®

1	Ulcinex®
2	Ultra CLA®
3	Ultra Potent-C® 1000
4	Ultra Potent-C® 250mg Chewable Orange
5	Ultra Potent-C® 500
6	Ultra Potent-C® Powder 8oz.
7	UltraFlora™ Acute Care (formerly Proboulardi)
8	UltraFlora™ IB
9	UltraFlora™ Intensive Care (formerly LactoFlamX)
10	UltraFlora™ Plus Advanced
11	(formerly Ultra Flora Plus)
12	UltraFlora™ Immune Health
13	(formerly Ultra Flora Plus)
14	Ultra Flora™ Synergy Powder (formerly Ultra Flora Plus DF)
15	UltraFlora™ Balance (Ultra Flora Plus DF)
16	UltraFlora™ Children's
17	UltraFlora™ Spectrum
18	Vasotensin®
19	VenaPlex®
20	Zinc A.G.™
21	Zinc Drink™
22	Zinc Tally™
23	Zinlori 75™

**Exhibit B**

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LAW OFFICES OF  
**ANDREW L. PACKARD**

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

August 31, 2009

**VIA CERTIFIED MAIL**

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

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

Dear Sir,

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

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

The name of the violator covered by this notice is **Metagenics, Inc.** (hereafter, the "Violator"). The Violator manufactures, markets, distributes and/or sells in California herbal dietary supplements. These ongoing violations arise out of exposures to lead and lead compounds from the following herbal dietary supplement product(s):

*Nazanol*  
*Exhilarin*  
*Zinlori 75*

On February 27, 1987, the State of California officially listed lead as a substance known to cause reproductive toxicity. On October 1, 1992, the State of

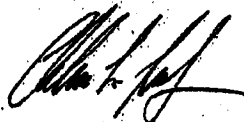
California officially listed lead and lead compounds as a substance known to cause cancer.

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

**Duration of violations.** Each of these ongoing violations has occurred on every day since at least August 31, 2008, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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

Very Truly Yours,



Andrew L. Packard

**Attachments:**

OEHHA Summary

Certificate of Merit (w/o Attorney General's attachments)

Certificate of Service



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

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 31, 2009

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

Attachments (for Attorney General Copy only)

CERTIFICATE OF SERVICE

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

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

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

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

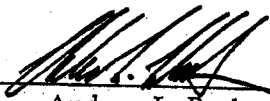
Mr. Jeffrey J. Katke, Chief Executive Officer  
Metagenics, Inc.  
100 Avenida La Pata  
San Clemente, CA 92673

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

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

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

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



Andrew L. Packard

Notary Public  
312 Main Street  
Petaluma, CA  
  
Deputy Notary  
312 Main Street  
Petaluma, CA

Service List (Page 1 of 4)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Service List (Page 2 of 4)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Service List (Page 3 of 4)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Service List (Page 4 of 4)

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

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

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

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

**Exhibit C**

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LAW OFFICES OF  
**ANDREW L. PACKARD**

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

March 8, 2012

*VIA CERTIFIED MAIL*

Mr. Fred Howard, Chief Executive Officer  
Metagenics, Inc.  
100 Avenida La Pata  
San Clemente, CA 92673

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

Dear Sir,

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

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

The name of the violator covered by this notice is **Metagenics, Inc.** (hereafter, the "Violator"). The Violator manufactures, markets, distributes and/or sells in California herbal dietary supplements. These ongoing violations arise out of exposures to lead and lead compounds from the following herbal dietary supplement product(s):

*Andographis Plus, Herbal Immune Support  
Essential Defense, Immune Support  
Ulcinex, Stomach Formula.*



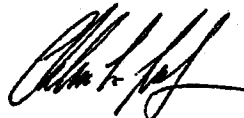
On February 27, 1987, the State of California officially listed lead as a substance known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as a substance known to cause cancer.

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

**Duration of violations.** Each of these ongoing violations has occurred on every day since at least March 8, 2009, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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

Very Truly Yours,



Andrew L. Packard

**Attachments:**

OEHHA Summary

Certificate of Merit (w/o Attorney General's attachments)

Certificate of Service

**CERTIFICATE OF MERIT**  
**(Re: Stephen D. Gillett's March 8, 2012**  
**Notice of Proposition 65 Violations**  
**Issued to Metagenics, Inc.)**

I, Andrew L. Packard, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 8, 2012

  
\_\_\_\_\_  
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 100 Petaluma Boulevard North, Suite 301, Petaluma, California 94952.

On March 8, 2012, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY"**

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

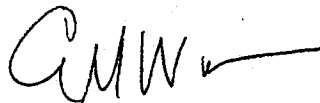
Mr. Fred Howard, Chief Executive Officer  
Metagenics, Inc.  
100 Avenida La Pata  
San Clemente, CA 92673

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

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Executed on March 8, 2012, in Petaluma, California.



Erin Wilkins

Service List (Page 1 of 4)

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

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San Luis Obispo, CA 93408

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Redwood City, CA 94063

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District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Service List (Page 4 of 4)**

The Honorable Carmen A. Trutanich  
Los Angeles City Attorney's Office  
Room 1800, City Hall East  
200 North Main Street  
Los Angeles, CA 90012

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

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

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

**Exhibit D**

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LAW OFFICES OF  
**ANDREW L. PACKARD**  
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

March 27, 2013

*VIA CERTIFIED MAIL*

Mr. Fred Howard, Chief Executive Officer  
Metagenics, Inc.  
100 Avenida La Pata  
San Clemente, CA 92673

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

Dear Sir,

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

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

The name of the violator covered by this notice is **Metagenics, Inc.** (hereafter, the "Violator"). The Violator manufactures, markets, distributes and/or sells in California herbal dietary supplements. These ongoing violations arise out of exposures to lead and lead compounds from the herbal dietary supplement products set forth on Exhibit A hereto.

On February 27, 1987, the State of California officially listed lead as a substance known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as a substance known to cause cancer.

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

**Duration of violations.** Each of these ongoing violations has occurred on every day since at least March 27, 2010, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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

Very Truly Yours,



Andrew L. Packard

Attachments:

OEHHA Summary

Certificate of Merit (w/o Attorney General's attachments)

Certificate of Service

1  
2 **Exhibit A**

3 All forms, sizes, packaging, labeling (e.g., tablets, pills, powders, liquids, capsules, gel caps) of:

4 **PRODUCTS**

5	C-500 Methoxyflavone™
6	Adrenogen®
7	Adreset®
8	AdvaClear®
9	Andrographis Plus®
10	Azeo-Pangen™
11	Azeo-Pangen™ Extra Strength
12	Benesom®
13	BifoViden ID®
14	BioSom® (cherry flavored)
15	Black Cohosh Plus®
16	CandiBactin-AR®
17	CandiBactin-BR®
18	Celapro®
19	Chasteberry Plus®
20	Cholarest SC®
21	ChondroCare® with MSM
22	Chromium Picolinate
23	CogniSure®
24	Concentrated Ultra Prostagin®
25	Coratin™
26	CoQ10 ST-100™
27	CoQ10 ST-200™
28	Cortico-B5B6®
	C-Ultratabs™
	D <sub>3</sub> 1000™
	D <sub>3</sub> 2000™ Complex
	D <sub>3</sub> 5000™ (formerly IsoD 3 2000)
	D <sub>3</sub> Liquid™
	E Complex 1:1™
	E-400 Selenium™
	EC Matrixx®

1	Echinacea Synergy™
2	Endefen®
3	Energenics®
4	Essential Defense®
5	EstroFactors®
6	Estrovera™
7	Exhilarin®
8	Fem EstroPlex®
9	Fem Premenstrual™
10	Fenugreek Plus®
11	GinkgoRose™
12	Gluco Factors™
13	Glucorest®
14	Glucosamine Sulfate
15	Glucosamine Sulfate 750™
16	GlutaClear™
17	Glutagenics®
18	Immucore®
19	Inflavonoid®
20	Inflavonoid Intensive Care®
21	Insinase®
22	Intesol® Enteric coated
23	Juicy Fruit-C™
24	Kaprex® AI
25	Kaprex®
26	LactoViden ID®
27	L-Carnitine
28	Licorice Plus®
	Lipotain®
	Lumina®
	Meta I-3-C®
	Meta Lipoate® 300
	Metagest®
	MetalloClear®
	Meta-Sitosterol™ 2.0

1	Metazyme®
2	Mycoferon®
3	Mycotaki®
4	NanoCell-Q™
5	Nazanol™
6	Niatain®
7	NuSera®
8	NutraGems™ CoQ10 300
9	NutraGems™ EPA-DHA 250
10	OmegaGenics™ Evening
11	Primrose Oil (formerly
12	MetaEPO)
13	OmegaGenics™ GLA 240
14	(formerly GLA Forte®)
15	Ostera®
16	Oxygenics®
17	Perimine®
18	PhytoComplete®
19	Phytoganix®
20	Probioplex®
21	Probioplex® Intensive Care
22	Protrypsin®
23	Selestro®
24	Serenagen®
25	Silymarin 80™
26	Sinuplex®
27	SpectraSoy®
28	Spectrazyme®
	SuperGarlic 6000®
	Testralin®
	Thyrosol®
	Thyro-Vital™ (Ethical
	Nutrients brand)
	Tran-Q®
	Tribulus Synergy®

1	Ulcinex®
2	Ultra CLA®
3	Ultra Potent-C® 1000
4	Ultra Potent-C® 250mg Chewable Orange
5	Ultra Potent-C® 500
6	Ultra Potent-C® Powder 8oz.
7	UltraFlora™ Acute Care (formerly Proboulardi)
8	UltraFlora™ IB
9	UltraFlora™ Intensive Care (formerly LactoFlamX)
10	UltraFlora™ Plus Advanced
11	(formerly Ultra Flora Plus)
12	UltraFlora™ Immune Health
13	(formerly Ultra Flora Plus)
14	Ultra Flora™ Synergy Powder (formerly Ultra Flora Plus DF)
15	UltraFlora™ Balance (Ultra Flora Plus DF)
16	UltraFlora™ Children's
17	UltraFlora™ Spectrum
18	Vasotensin®
19	VenaPlex®
20	Zinc A.G.™
21	Zinc Drink™
22	Zinc Tally™
23	Zinlori 75™

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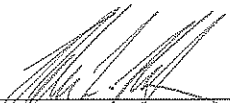
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Dated: March 27, 2013

  
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Andrew L. Packard

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District Attorney, Santa Clara County  
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