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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**

13 STEPHEN D. GILLETT, an individual,)

14 Plaintiff,)

15 v.)

16 METAGENICS, INC., a corporation,)

17 Defendant.)

18 Case No. CGC-09-494987

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

21 This agreement (“Consent Judgment” or “agreement”) is entered into by and between
22 STEPHEN D. GILLETT (“PLAINTIFF”) and METAGENICS, INC. (“METAGENICS” or
23 “DEFENDANT”) to resolve all claims raised in the Complaints filed against Defendant in the
24 above-captioned action. This Consent Judgment shall be effective upon entry by this Court.

25 PLAINTIFF and METAGENICS (collectively “the Parties” and each individually a “Party”) agree
26 to the terms and conditions set forth below.

27 WHEREAS, analysis of this general category of products, including but not limited to these
28 Covered Products (as defined below), using inductively coupled plasma mass spectrometry reveals
that there can be detectable lead in some production lots of such products, there can be variations in
lead concentrations within a single lot of any particular product, there can be variation among
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) 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 Francisco Superior Court Case No. CGC-03-422848 (filed 5/24/05) allows, *inter alia*, dietary
27 supplement products containing a concentration of lead in the products of up to four (4) micrograms
28

1 per day, assuming the product is used or consumed according to the defendant's consumer use
2 instructions, to be sold in California without a warning, provided that each covered defendant
3 complies with Consent Judgment terms.

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

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

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

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

26 WHEREAS, the Consent Judgment in *People v. Warner-Lambert Co. et al.*, San Francisco
27 Superior Court Case No. CGC-00-984503 (filed 11/13/1998 and modified on 07/15/11), allows,
28

1 *inter alia*, a naturally occurring allowance of 0.8 micrograms of lead per 1000 milligrams of
2 calcium, and naturally occurring allowances of 0.4 mcg/g for ferrous fumarate, 8.0 mcg/g for zinc
3 oxide, 0.4 mcg/g for magnesium oxide, 0.332 mcg/g for magnesium carbonate, 0.4 mcg/g
4 magnesium hydroxide, 0.8 mcg/g zinc gluconate, and 1.1 mcg/g potassium chloride. In 2012 the
5 People afforded the same naturally occurring allowances to dozens of defendants, including
6 Defendant, in a series of consent judgments resolving a case styled *People v. 21st Century*
7 *Healthcare, Inc. et al.*, Alameda Superior Court Case No. RG08426937; these allowances are not
8 incorporated herein.

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

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

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

18 WHEREAS, the Parties enter into this Consent Judgment to settle disputed claims between
19 them and to avoid prolonged litigation. By execution of this Consent Judgment, the Parties do not
20 admit any facts, violations of law, conclusions of law, the applicability of Proposition 65, or the
21 applicability or violation of any other law or standard governing warnings or disclosures in
22 connection with the manufacture, packaging, labeling, distribution and/or sale of the Products.

23 **1. INTRODUCTION**

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

1 **1.2** METAGENICS is a Delaware corporation that sells in California certain dietary
2 supplements (defined below as the “COVERED PRODUCTS”), all of which Plaintiff alleges
3 contain lead, a chemical regulated by the State of California as known to cause cancer or
4 reproductive toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986
5 (“Proposition 65”), California Health and Safety Code § 25249.5 *et seq.*; Title 27, California Code of
6 Regulations, § 25000 *et seq.* The COVERED PRODUCTS initially covered by this Consent
7 Judgment are set forth on **Exhibit A** hereto. Products not appearing on Exhibit A are not covered by
8 the injunctive provisions or the release of liability set forth herein, except predecessor, successor or
9 future new COVERED PRODUCTS as defined in this Section 1.2 are covered by the terms of this
10 agreement applicable to each such category. All forms, sizes, packaging, labeling of the COVERED
11 PRODUCTS are included in this agreement. Predecessor and, in the future, successor products to
12 the COVERED PRODUCTS are also COVERED PRODUCTS.¹ In the future, new products which
13 would have been Covered Products if they had been made today also will be deemed COVERED
14 PRODUCTS, meaning all new dietary supplements manufactured directly by, or for, Defendant and
15 sold in the form of tablets, pills, powders, liquids, capsules, gel caps; and which are branded with
16 Defendant’s label, or co-branded by Defendant and another party, or labeled by a third party but are
17 the same product as a product branded or co-branded with Defendant’s name or label; and which are
18 either plant or herbal containing products, or vitamin or mineral based products, or enzyme products,
19 or probiotics/prebiotics products, or amino acids/other dietary compound products. New covered
20 products shall not include: (a) foods, if any, which are not dietary supplements; (b) meal
21 replacement products or bars; (c) ready-to-drink liquids or ready-to-mix powders intended to

22 _____
23 ¹ 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 constitute beverages; (d) dietary supplements which are custom formulated for a customer of
2 Defendant; (e) products subject to the consent judgment resolving *People v. 21st Century*
3 *Healthcare, Inc. et al.*, Alameda Superior Court Case No. RG08426937; or (f) products marketed to
4 and intended for consumption by children. None of the COVERED PRODUCTS listed on Exhibit
5 A fall into any of the categories of products listed immediately above in (a)-(f).

6 **1.3** If Plaintiff has a question whether a product is a COVERED PRODUCT, Plaintiff
7 shall inquire in writing of Defendant and Defendant shall verify whether a product is a COVERED
8 PRODUCT, promptly, and in no event later than two (2) weeks after the request.

9 **1.4** The COVERED PRODUCTS have been imported, manufactured, distributed and/or
10 sold by METAGENICS for use in California.

11 **1.5** On February 27, 1987, the State of California officially listed the chemical lead as a
12 chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code
13 § 25249.8.

14 **1.6** On October 1, 1992, the State of California officially listed the chemical lead as a
15 chemical known to cause cancer, pursuant to California Health and Safety Code § 25249.8.

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

23 **1.8** PLAINTIFF filed a Complaint entitled *Stephen D. Gillett v. Metagenics, Inc.*, Case
24 Number CGC-09-494987 (the “Action”) in San Francisco Superior Court alleging violations of
25 Proposition 65.

26 **1.9** On March 8, 2012, PLAINTIFF again served METAGENICS and each of the
27 appropriate public enforcement agencies with documents entitled “60-Day Notice” that provided
28

1 METAGENICS and the public enforcement agencies with notice that METAGENICS was in
2 violation of Proposition 65 for failing to warn the purchasers and individuals using some of the
3 COVERED PRODUCTS that the use of these COVERED PRODUCTS exposed them to lead, a
4 chemical known to the State of California to cause reproductive toxicity. A copy of this notice is
5 attached hereto as **Exhibit C**.

6 **1.10** On March 27, 2013 PLAINTIFF served METAGENICS with another “60 Day
7 Notice” that provided METAGENICS and the public enforcement agencies with notice that
8 METAGENICS was in violation of Proposition 65 for failing to warn the purchasers and individuals
9 using some of the COVERED PRODUCTS that the use of these COVERED PRODUCTS exposed
10 them to lead, a chemical known to the State of California to cause reproductive toxicity. A copy of
11 this notice is attached hereto as **Exhibit D**.

12 **1.11** The First Amended Complaint in the Action was filed on October 15, 2010. The
13 Second Amended Complaint was filed on May 14, 2012. The operative Third Amended Complaint
14 was filed on September 28, 2012. Upon the entry of this Consent Judgment, the Third Amended
15 Complaint will be amended, and the (proposed) Fourth Amended Complaint lodged concurrently
16 with this Consent Judgment shall be filed, and shall be the operative complaint and Action with
17 respect to METAGENICS. If a public prosecutor were to commence an action respecting the
18 COVERED PRODUCTS listed in the March 27, 2013 “60 Day Notice” before this agreement is
19 approved by the Court, then either Party, in its sole discretion, may declare this agreement null and
20 void and it shall be deemed null and void *ab initio*.

21 **1.12** The Action was brought against METAGENICS by PLAINTIFF in the public interest
22 at least sixty (60) days after PLAINTIFF provided notice of the Proposition 65 violations to
23 METAGENICS and the appropriate public enforcement agencies. None of the public enforcement
24 agencies had commenced and begun diligently prosecuting an action against METAGENICS for
25 such violations for any of the products listed in the August 31, 2009, March 8, 2012 or the March 27,
26 2013 “60 Day Notices.”
27
28

1 **1.13** For purposes of this Consent Judgment, the Parties stipulate that this Court has
2 subject matter jurisdiction over the allegations contained in the Action.

3 **1.14** The Parties enter into this Consent Judgment to settle disputed claims between them
4 and to avoid prolonged litigation. By execution of this Consent Judgment, METAGENICS does not
5 admit any violations of Proposition 65, or any other law or standard applicable to warning or
6 disclosure concerning the import, manufacture, distribution and/or sale of the COVERED
7 PRODUCTS. Nothing in this Consent Judgment shall be construed as an admission by any Party of
8 any fact, issue of law, conclusion of law, or violation of law, nor shall compliance with this Consent
9 Judgment constitute or be construed as an admission by any Party of any fact, issue of law,
10 conclusion of law, or violation of law.

11 **1.15** Except as expressly provided herein, nothing in this Consent Judgment shall
12 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or further
13 legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,
14 responsibilities and duties of the Parties under this Consent Judgment.

15 **2. INJUNCTIVE PROVISIONS**

16 **2.1 Provision of Clear and Reasonable Proposition 65 Warnings.**

17 **2.1.1.** When required under Section 2.2, METAGENICS shall permanently cease sales of,
18 and no longer ship for sale or use in California, any of the COVERED PRODUCTS (as defined in
19 Sections 1.2 and 1.3, above) unless each individual unit of such COVERED PRODUCT bears the
20 following warning statement on its label or attached to or affixed to the individual unit or the
21 packaging (including a hang tag):

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

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

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

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

7
8 **2.1.2 Mail Order Sales.**

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

13 **2.1.3 Internet Sales.**

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

24 **2.1.4** Any changes to the text or format of the warning language other than as set
25 forth in Section 2.1.1 shall be made only after Court approval. METAGENICS shall first request
26 any such change in the text or format of the warnings and if: (a) PLAINTIFF or the Attorney
27 General objects, or (b) neither PLAINTIFF nor the Attorney General responds to that request within
28 ninety (90) days, then METAGENICS may move the Court via noticed motion to modify the

1 Consent Judgment. If the Attorney General approves the requested changed and PLAINTIFF does
2 not respond to the requested change within ninety (90) days, the requested change shall be deemed
3 to have been approved by both the Attorney General and PLAINTIFF.

4 **2.2 When Warnings Are Required.** Warnings shall be required under Section 2.1 for
5 COVERED PRODUCTS beginning on January 1, 2014 only under the follow circumstances:

6 a) for COVERED PRODUCTS imported, or manufactured, or distributed or sold by
7 METAGENICS after January 1, 2014; and

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

14 **2.3 Monitoring Program.**

15 (a) METAGENICS shall undertake an ongoing lead monitoring program. The lead
16 monitoring program shall include laboratory testing of each COVERED PRODUCT, including
17 testing on or before December 1, 2013 for currently manufactured, distributed or sold COVERED
18 PRODUCTS. Successor or new² COVERED PRODUCTS shall be tested before being distributed
19 or sold to California consumers. Measures undertaken to comply with state or federal Food, Drug
20 and Cosmetic Act obligations, and obligations under other consent judgments under Proposition 65,
21 may be included as part of the lead monitoring program under this Consent Judgment.

22 (b) A presumptive level of lead in any COVERED PRODUCT for any purpose under this
23 Consent Judgment shall be established when METAGENICS conducts, or has conducted on its
24 behalf, testing of a minimum of three (3) and a maximum of twelve (12) samples (at
25 METAGENICS' discretion) from different lots or batches (if different lots or batches are available),
26

27 ² Metagenics may, but is not obligated to, test or arrange for testing of predecessor Covered Products if samples or
28 retains are available.

1 or a minimum of one sample which consists of a composite of at least three (3) test specimens if at
2 least three (3) lots or batches are not available, which comprise the subject COVERED PRODUCT,
3 using Method AOAC modified 993.14 (Elements by ICPMS) and calculates the arithmetic mean
4 (average) of the samples so tested (the "Presumptive Level"). The initial Presumptive Levels for
5 each COVERED PRODUCT shall be established by December 1, 2013. The test results which
6 METAGENICS uses to establish the Presumptive Level shall be normalized when calculating the
7 mean, so that each individual test result may not differ by more than three (3) times the standard
8 deviation. Any test result which differs by more than three (3) times the standard deviation from the
9 mean shall be deemed an "Outlier." Outlier test results shall not be used to set the initial
10 Presumptive Levels, nor shall Outlier test results be used to calculate future Presumptive Levels. If
11 a COVERED PRODUCT has an Outlier test result of > 2.90 ug/day lead as calculated under this
12 Section 2, then that specific lot or batch is subject to the applicable warning obligations of Sections
13 2.1 and 2.2 and is subject to the limitation on sales in Section 2.4. The initial Presumptive Levels
14 under this Consent Judgment shall be based on test data obtained between September 1, 2012 and
15 December 1, 2013. Subsequent Presumptive Levels for the COVERED PRODUCTS shall be set on
16 an ongoing basis as new test data is obtained under the ongoing lead monitoring program.
17 METAGENICS shall be entitled to rely on the Presumptive Level of lead for all purposes of this
18 Consent Judgment, except as provided in Section 2.3(d) below.

19 (c) METAGENICS shall deliver a summary table of the Presumptive Level lead test
20 results to PLAINTIFF by December 20, 2013 based on data and information obtained between
21 September 1, 2012 and December 1, 2013. The table shall include the Presumptive Level and the
22 number of test samples on which the Presumptive Level is based. This table shall remain
23 confidential, PLAINTIFF shall not disclose the results to any person without the prior written
24 consent of DEFENDANT, and the results of the table shall be used solely for purposes of monitoring
25 compliance under this Consent Judgment; provided, however, that in the event of a dispute over lead
26 levels in a COVERED PRODUCT the Parties agree that the Presumptive Level of the product in
27 dispute (but not the table itself) may be revealed to the Court to the extent necessary to resolve the
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1 dispute and to enforce this Consent Judgment. In addition to PLAINTIFF’S review of test data, the
2 Court and the Office of the Attorney General may request at any time that DEFENDANT provide
3 the test data supporting any given Presumptive Level as either deems necessary to monitor or to
4 enforce this Consent Judgment.

5 (d) PLAINTIFF shall not allege a violation of this Consent Judgment respecting a failure
6 to warn unless PLAINTIFF has obtained at least three (3) valid test results, and the arithmetic mean
7 (average) of PLAINTIFF’S results documents a failure to warn under this Consent Judgment. Then
8 the Parties shall meet and confer. In the event of a dispute between the Parties as to whether there is
9 a failure to warn under this Consent Judgment, at least three (3) additional samples shall be tested at
10 a commercial laboratory acceptable to all Parties. The determinative level of lead shall be the
11 arithmetic mean (average) of all of the samples tested, including the test results PLAINTIFF has
12 obtained, DEFENDANT’S existing results obtained under the ongoing lead monitoring program,
13 and any additional results obtained as a result of testing pursuant to the dispute resolution process of
14 this Section 2.3(d), but excluding any Outlier test results (as defined in Section 2.3(c) (the
15 “Determinative Level”). The Determinative Level of lead shall be the level evaluated to determine
16 compliance with the obligations of this Consent Judgment from and after the date the Determinative
17 Level is established and the Determinative Level then shall replace the Presumptive Level for the
18 subject COVERED PRODUCT. The Determinative Level for a given COVERED PRODUCT may
19 be established at any time and the Parties expressly contemplate that in the event of a dispute
20 regarding the Determinative Level, METAGENICS shall be afforded an opportunity to supplement
21 the existing test data and information on hand.

22 **2.4 Limitation on Sales.** METAGENICS shall not sell any COVERED PRODUCT,
23 even with a warning under Sections 2.1.1. – 2.1.4., to a California consumer if the exposure to lead
24 in a daily dose as determined under Sections 2.2 and 2.3 exceeds 12 ug/day.

25 **2.5 Quality Control Measures.** METAGENICS shall continue employing good
26 manufacturing practices, which may be adjusted from time to time, and shall continue employing
27 quality control measures, which may be adjusted from time to time, intended to reduce natural
28

1 chemical contaminants to the “lowest level currently feasible,” as this term is used in 21 C.F.R.
2 Section 110.110(c) (2001).

3 **2.6 Ongoing Compliance with Proposition 65.** As of the date of entry of this Consent
4 Judgment, compliance with this Consent Judgment shall constitute compliance with Proposition 65
5 respecting lead in any COVERED PRODUCT, regardless of when such COVERED PRODUCT is
6 or was manufactured, distributed or sold by METAGENICS or by any other person.

7
8 **3. CIVIL PENALTIES**

9 **3.1 Civil Penalty Assessment.** METAGENICS shall pay a civil penalty in the amount of
10 \$65,000.00, pursuant to Health & Safety Code § 25249.7(b). PLAINTIFF shall remit 75% of this
11 amount to the State of California pursuant to Health & Safety Code § 25249.12(c)(1).

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

13 **4.1 Reimbursement of PLAINTIFF’S Investigative, Expert and Legal Fees and**
14 **Costs.** METAGENICS shall reimburse PLAINTIFF in the amount of \$255,000.00 for costs of suit,
15 including attorneys’ fees, incurred in the Action in full and complete satisfaction of PLAINTIFF’S
16 claims and PLAINTIFF expressly waives the right, if any, to receive additional sums from
17 METAGENICS.

18 **5. PAYMENT OBLIGATIONS**

19 **5.1** METAGENICS shall pay the sums due under Sections 3.1 and 4.1 within fifteen (15)
20 court days after the date on which this judgment is entered by the Court. Such sums shall be made
21 payable to “Law Office of Andrew L. Packard Attorney-Client Trust Account.” PLAINTIFF and its
22 counsel shall cooperate by providing METAGENICS with any wiring instructions, taxpayer
23 identification information, and other information required to facilitate the payment.

24 **5.2** In the event that any payment owed to PLAINTIFF under this Consent Judgment is
25 late, METAGENICS shall be deemed to be in default of its obligations under this Consent Judgment.
26 PLAINTIFF shall provide written notice to METAGENICS of any default. If METAGENICS fails
27 to remedy its default within two (2) business days of such notice, interest shall accrue on any unpaid
28 balance at the prevailing federal funds rate.

1
2 **5.3** If the Office of the Attorney General files one or more objections to this Consent
3 Judgment with the Court, PLAINTIFF’S counsel shall retain all funds tendered under this Consent
4 Judgment in a client trust account and not disburse them until the later of: a) the time period for an
5 appeal by the Attorney General has lapsed or b) if the Attorney General files an appeal, until the
6 appeal is concluded. If a higher court rules some or any part of this Consent Judgment is void, or
7 otherwise invalidates the whole or any part, or remands the matter for further proceedings before this
8 Court, then within 15 day after the date such determination is deemed final PLAINTIFF’S counsel
9 shall refund from its client trust account all sums originally paid to METAGENICS.



10 **6. RELEASE OF LIABILITY**

11 **6.1 Release of Liability of METAGENICS.** PLAINTIFF, on his own behalf, and in the
12 public interest, waives, releases, and discharges all rights to institute any form of legal action against
13 METAGENICS, its officers, directors, employees, attorneys, representatives, parents, subsidiaries,
14 affiliates, divisions and subdivisions, upstream suppliers, distributors, wholesalers, retailers or other
15 sellers concerning the import, manufacture, distribution and/or sale of the COVERED PRODUCTS
16 based upon METAGENICS’, or any other person’s, alleged failure to warn, within the meaning of
17 Proposition 65, about exposure to lead and lead compounds contained in any of the COVERED
18 PRODUCTS sold by METAGENICS or by any other person on or before the entry of this Consent
19 Judgment.

20 **6.2 Release of Liability of PLAINTIFF.** METAGENICS releases and waives all rights
21 to institute any form of legal action against PLAINTIFF, for all actions or statements made or
22 undertaken by the PLAINTIFF in the course of this Action.

23 **6.3 General Release of METAGENICS by PLAINTIFF.** This Consent Judgment is a
24 final and binding release between PLAINTIFF, on his own behalf, and METAGENICS, of any and
25 all claims, actions, complaints, causes of action, rights, demands, defenses, liabilities, or latent
26 deficiencies of any kind whatsoever, whether in law or in equity, whether contractual, common law,
27 statutory, federal, state, or otherwise (the “Claims”), which PLAINTIFF has or could have, whether
28 now or in the future, known or unknown, against METAGENICS or other such parties released

1 under Section 6.1 arising out of the Action or any violation of Proposition 65 up through the date of
2 entry of this order by the Court. No Claim is reserved as between PLAINTIFF, on his own behalf,
3 and METAGENICS, and PLAINTIFF expressly waives any and all rights which either may have
4 under the provisions of Section 1542 of the Civil Code of the State of California, which provides:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
6 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
7 THE TIME OF EXECUTING THE RELEASE, WHICH IS KNOWN BY HIM
8 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
9 DEBTOR.  Plaintiff  Defendant

10 **7. COVENANT NOT TO SUE**

11 7.1 Excepting enforcement of this Consent Judgment, PLAINTIFF hereby covenants not
12 to sue METAGENICS under Proposition 65 or any other law or standard applicable to warning or
13 disclosure concerning the import, manufacture, distribution and/or sale of any COVERED
14 PRODUCT.

15 **8. CONSENT JUDGMENT**

16 8.1 **Consent Judgment.** Upon execution of this [Proposed] Consent Judgment,
17 PLAINTIFF shall file a Motion for Approval & Entry of Consent Judgment in the San Francisco
18 Superior Court. Pursuant to Title 11, Cal. Code of Regs. § 3003, this motion shall be served upon
19 all of the parties to the Action and upon the California Attorney General's Office. The Court shall
20 either approve or disapprove of this Consent Judgment in its entirety, without alteration, deletion or
21 amendment, unless otherwise so stipulated by the Parties or their counsel. METAGENICS agrees to
22 support the motion to approve this Consent Judgment in full.

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

24 9.1 **Enforcement.** In the event that a dispute arises with respect to any of the provisions
25 of this Consent Judgment, the Parties shall meet and confer within twenty (20) days after either Party
26 receives written notice of an alleged violation of this Agreement from the other Party. In the event
27 the Parties cannot resolve the dispute, this Consent Judgment may be enforced pursuant to Code of
28

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

1 Civil Procedure § 664.6 or any other valid provision of law. The prevailing party in any dispute
2 regarding compliance with the terms of this Consent Judgment shall be awarded its reasonable fees
3 and costs incurred, in addition to any other relief ordered by the Court.

4 **9.2 Modification of Judgment – Procedure.** This Consent Judgment may be modified
5 only by a Court order approving a noticed Motion served on all Parties and the Attorney General.

6 **9.3. Dispute Resolution.** In the event of a dispute, the Parties shall first meet and confer
7 in good faith and attempt to resolve the matter through negotiation. The Parties agree to meet and
8 confer within thirty (30) days of the date a Party notifies the other Party in writing of a dispute
9 hereunder. The Parties shall resolve the dispute within thirty (30) days of the date they meet and
10 confer or, if they do not resolve the issue, then any Party may move the Court via a noticed motion
11 (including service on the Office of the Attorney General) for such resolution as is authorized under
12 this Consent Judgment or applicable law. The prevailing party in a dispute heard by the Court may
13 request the Court award attorney’s fees and costs, and the Court may award such fees and costs in its
14 discretion.

15 **10. GOVERNING LAW**

16 **10.1 Governing Law.** The terms of this Consent Judgment shall be governed by the laws
17 of the State of California.

18 **11. NOTICES**

19 **11.1 Notices.** All correspondence and notices required to be provided under this Consent
20 Judgment shall be in writing and shall be sent by an overnight courier service with a tracking system
21 to verify delivery and addressed as follows:

22 All correspondence to PLAINTIFF shall be mailed to:
23 Mr. Stephen D. Gillett
24 P.O. Box 170142
25 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

1 All correspondence to METAGENICS shall be mailed to:

2 Attn: General Counsel
3 Metagenics, Inc.
4 25 Enterprise
5 Aliso Viejo, CA 92656

With a copy to:

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

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

7 **12. INTEGRATION AND MODIFICATION**

8 **12.1 Integration & Modification.** This Consent Judgment, together with the Exhibits
9 hereto which are specifically incorporated herein by this reference, constitutes the entire agreement
10 between the Parties relating to the rights and obligations herein granted and assumed, and supersedes
11 all prior agreements and understandings between the Parties. This Consent Judgment may be
12 modified by any procedure provided by law for the modification of judgments.

13 **13. COUNTERPARTS**

14 **13.1 Counterparts.** This Consent Judgment may be executed in counterparts, each of
15 which shall be deemed an original, and all of which, when taken together, shall constitute one and
16 the same document.

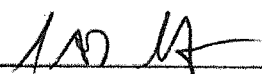
17 **14. AUTHORIZATION**

18 **14.1 Authorization.** The undersigned are authorized to execute this Consent Judgment on
19 behalf of their respective parties and have read, understood, and agree to all of the terms and
20 conditions of this Consent Judgment.

21 **IT IS SO STIPULATED:**

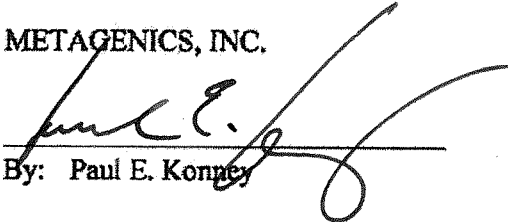
22 DATED: 9/24/13

STEPHEN D. GILLETT

23 
By: Stephen D. Gillett

24 DATED: 27 Sept. 13

METAGENICS, INC.

25 
26 By: Paul E. Konney
27
28

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

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IT IS SO ORDERED:

DATED: _____

The Honorable John E. Munter
Judge of the Superior Court

INDEX OF ATTACHED EXHIBITS

- EXHIBIT A - Product List
- EXHIBIT B - Notice of Proposition 65 Violation dated August 31, 2009
- EXHIBIT C - Notice of Proposition 65 Violation dated March 8, 2012
- EXHIBIT D – Notice of Proposition 65 Violation dated March 27, 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 ₃ 1000™
D ₃ 2000™ Complex
D ₃ 5000™ (formerly IsoD 3 2000)
D ₃ 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® Enteric coated
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 Primrose Oil (formerly MetaEPO)
11	OmegaGenics™ GLA 240 (formerly GLA Forte®)
12	Ostera®
13	Oxygenics®
14	Perimine®
15	PhytoComplete®
16	Phytoganix®
17	Probioplex®
18	Probioplex® Intensive Care
19	Protrypsin®
20	Selestro®
21	Serenagen®
22	Silymarin 80™
23	Sinuplex®
24	SpectraSoy®
25	Spectrazyme®
26	SuperGarlic 6000®
27	Testralin®
28	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

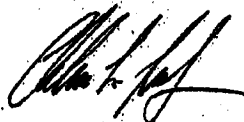
California officially listed lead and lead compounds as a substance known to cause cancer.

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:

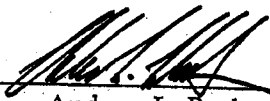
Mr. Jeffrey J. Katke, Chief Executive Officer
Metagenics, Inc.
100 Avenida La Pata
San Clemente, CA 92673

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

Notary Public
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 Flippo
District Attorney, Monterey County
PO Box 1131
Salinas, CA 93901

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

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

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

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

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

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

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

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

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

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

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

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

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

Service List (Page 3 of 4)

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

The Honorable Thomas W. Sneddon, Jr.
District Attorney, Santa Barbara County
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 11th Street, Room 200
Modesto, CA 95353

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

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

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

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

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

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

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

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

Service List (Page 4 of 4)

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

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

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

The Honorable Richard Doyle
San Jose City Attorney's Office
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.*

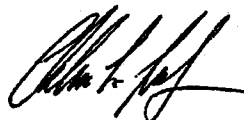
On February 27, 1987, the State of California officially listed lead as a substance known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as a substance known to cause cancer.

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:

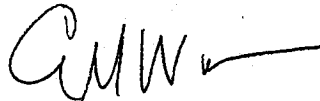
Mr. Fred Howard, Chief Executive Officer
Metagenics, Inc.
100 Avenida La Pata
San Clemente, CA 92673

On March 8, 2012, 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 March 8, 2012, 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 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

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
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The Honorable Robert Kochly
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Crescent City, CA 95531

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Downieville, CA 95936

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600 Administration Drive, Room 212J
Santa Rosa, CA 95403

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

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

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

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

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

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

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

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

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

Service List (Page 4 of 4)

The Honorable 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, 12th 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 ₃ 1000™
	D ₃ 2000™ Complex
	D ₃ 5000™ (formerly IsoD 3 2000)
	D ₃ Liquid™
	E Complex 1:1™
	E-400 Selenium™
	EC Matrixx®

1	Echinacea Synergy™
2	Endefen®
3	Energenics®
4	Essential Defense®
5	Estrovera™
6	Exhilarin®
7	Fem EstroPlex®
8	Fem Premenstrual™
9	Fenugreek Plus®
10	GinkgoRose™
11	Gluco Factors™
12	Glucorest®
13	Glucosamine Sulfate
14	Glucosamine Sulfate 750™
15	GlutaClear™
16	Glutagenics®
17	Immucore®
18	Inflavonoid®
19	Inflavonoid Intensive Care®
20	Insinase®
21	Intesol® Enteric coated
22	Juicy Fruit-C™
23	Kaprex® AI
24	Kaprex®
25	LactoViden ID®
26	L-Carnitine
27	Licorice Plus®
28	Lipotain®
29	Lumina®
30	Meta I-3-C®
31	Meta Lipoate® 300
32	Metagest®
33	MetalloClear®
34	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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CERTIFICATE OF MERIT
(Re: Stephen D. Gillett's March 27, 2013
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.

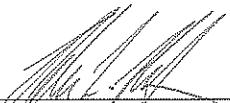
2. I am an attorney for the noticing party.

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 27, 2013



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 27, 2013, 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

On March 27, 2013, 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:

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Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On March 27, 2013, 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 March 27, 2013, in Petaluma, California.



Andrew L. Packard

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District Attorney, Alameda County
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Oakland, CA 94612

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