

ENDORSED
FILED

San Francisco County Superior Court

JUL 19 2007

GORDON PARK-LI, Clerk

BY: PARAM NATT
Deputy Clerk

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CASE MANAGEMENT CONFERENCE SET

Attorneys for Plaintiff
STEPHEN D. GILLETT

DEC 21 2007 -9⁰⁰AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

11 STEPHEN D. GILLETT,
12 Plaintiff,

13 v.

14 NEXGEN PHARMA, INC.,
15 Defendant.

) Case No. CCG-07-465289

) **COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

) Health & Safety Code §25249.5, *et seq.*;

) JURY TRIAL REQUESTED

18 Plaintiff Stephen D. Gillett brings this action in the interests of the general public and,
19 on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy Defendant's continuing failure to warn thousands
22 of consumers in California that they are being exposed to lead, a substance known to the State
23 of California to cause cancer, birth defects and other reproductive harm. Defendant is a
24 contract manufacturer of dietary supplements, pharmaceuticals, medical foods and OTC drugs.
25 Defendant manufactures, packages, distributes, markets and/or sells certain lead-containing
26 products in California (collectively referred to hereinafter as the "PRODUCTS").

1 2. Lead and lead compounds (hereinafter, the "LISTED CHEMICALS") are
2 substances known to the State¹ of California to cause cancer, birth defects and other
3 reproductive harm.

4 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
5 CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe
6 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code")
7 §25249.5, *et seq.* (also known as "Proposition 65"). Defendant has failed to provide the health
8 hazard warnings required by Proposition 65.

9 4. Defendant's continued manufacturing, packaging, distributing, marketing and/or
10 sales of the PRODUCTS without the required health hazard warnings, causes individuals to be
11 involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS that violate
12 Proposition 65.

13 5. By this action Plaintiff seeks appropriate relief:

- 14 a. prohibiting the continued manufacturing, packaging, distributing,
15 marketing and/or sales of the PRODUCTS in California by Defendant
16 without provision of clear and reasonable warnings regarding the risks of
17 cancer, birth defects and other reproductive harm posed by exposure to
18 the LISTED CHEMICALS through the use and/or handling of the
19 PRODUCTS; and,
- 20 b. assessing civil penalties in the amount of \$2,500 per day per violation to
21 remedy Defendant's ongoing failure to provide clear and reasonable
22 warnings to thousands of individuals that they are being exposed and
23 continue to be exposed to LISTED CHEMICALS through the use and/or
24 handling of the PRODUCTS;

25
26

¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 reasonable" warning requirements of Proposition 65 beginning on October 1, 1993. (22 CCR
2 §12000, *et seq.*; H&S Code §25249.6, *et seq.*)

3 18. Plaintiff is informed and believes, and based on such information and belief
4 alleges, that one or more of the PRODUCTS have been distributed and/or sold to individuals in
5 California without clear and reasonable warning since at least July 19, 2007. The PRODUCTS
6 continue to be distributed and sold in California without the requisite warning information.

7 19. As a proximate result of acts by Defendant, as a person in the course of doing
8 business within the meaning of Health & Safety Code §25249.11, individuals throughout the
9 State of California, including in the County of San Francisco, have been exposed to the
10 LISTED CHEMICALS without clear and reasonable warning. The individuals subject to the
11 violative exposures include normal and foreseeable users of the PRODUCTS, as well as all
12 other persons exposed to the PRODUCTS.

13 20. At all times relevant to this action, Defendant has knowingly and intentionally
14 exposed the users and/or handlers of the PRODUCTS to the LISTED CHEMICALS without
15 first giving a clear and reasonable warning to such individuals.

16 21. Individuals using or handling the PRODUCTS are exposed to the LISTED
17 CHEMICALS in excess of the levels determined by the State of California to cause "no
18 observable effect" or "no significant risk", as applicable, within the meaning of H&S Code
19 §25249.10(c).

20 22. At all times relevant to this action, Defendant has, in the course of doing
21 business, failed to provide individuals using and/or handling the PRODUCTS with a clear and
22 reasonable warning that the PRODUCTS expose individuals to the LISTED CHEMICALS.

23 23. The PRODUCTS continue to be distributed and sold in California without the
24 requisite clear and reasonable warning.

1 **DEMAND FOR JURY TRIAL**

2 33. Plaintiff demands a jury trial.

3
4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff accordingly prays for the following relief:

6 A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
7 enjoining Defendant, its agents, employees, assigns and all persons acting in concert or
8 participating with Defendant, from distributing or selling the PRODUCTS in California
9 without first providing a clear and reasonable warning, within the meaning of Proposition 65,
10 that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICALS.

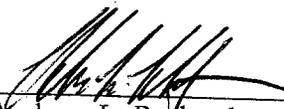
11 B. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
12 against Defendant in the amount of \$2,500 per day for each violation of Proposition 65;

13 C. an award to Plaintiff of its reasonable attorneys fees and costs of suit pursuant to
14 California Code of Civil Procedure §1021.5, as Plaintiff shall specify in further application to
15 the Court; and,

16 D. such other and further relief as may be just and proper.

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18 DATED: July 19, 2007

LAW OFFICES OF ANDREW L. PACKARD

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21 _____
22 Andrew L. Packard
23 Attorneys for Plaintiff
24 STEPHEN D. GILLETT
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