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9 Attorneys for Plaintiff  
10 STEPHEN D. GILLETT

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JUL 17 2008

GORDON PAH-LI, Clerk  
BY: MICHAEL RAYRAY  
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

DEC 19 2008 - 9:00 AM

DEPARTMENT 212

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

CSC-08-477605

11 STEPHEN D. GILLETT,  
12 Plaintiff,

13 v.

14 NATURAL FACTORS NUTRITIONAL  
15 PRODUCTS, INC.,  
16 Defendant.

) Case No. \_\_\_\_\_

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

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

17  
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  
24 manufactures, packages, distributes, markets, and/or sells in California herbal products  
25 containing lead (collectively referred to hereinafter as the "PRODUCTS").  
26

1           2.     Lead and lead compounds (hereinafter, the "LISTED CHEMICALS") are  
2 substances known to the State<sup>1</sup> 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  

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



1 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other  
2 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

3 14. To effect this goal, Proposition 65 requires that individuals be provided with a  
4 "clear and reasonable warning" before being exposed to substances listed by the State of  
5 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent  
6 part:

7 No person in the course of doing business shall knowingly and intentionally  
8 expose any individual to a chemical known to the state to cause cancer or  
9 reproductive toxicity without first giving clear and reasonable warning to such  
individual....

10 15. Proposition 65 provides that any person "violating or threatening to violate" the  
11 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7.) The phrase  
12 "threatening to violate" is defined to mean creating "a condition in which there is a substantial  
13 likelihood that a violation will occur." (H&S Code §25249.11(e).) Violators are liable for civil  
14 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

#### 15 FACTUAL BACKGROUND

16 16. On February 27, 1987, the State of California officially listed the chemical lead  
17 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
18 requirement one year later and was therefore subject to the "clear and reasonable" warning  
19 requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of  
20 Regulations ("CCR") §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

21 17. On October 1, 1992, the State of California officially listed the chemicals lead  
22 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
23 subject to the warning requirement one year later and were therefore subject to the "clear and  
24 reasonable" warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR §  
25 25000, *et seq.*; H&S Code §25249.6, *et seq.*)

26 18. Plaintiff is informed and believes, and based on such information and belief  
alleges, that one or more of the PRODUCTS have been distributed and/or sold to individuals in

1 California without clear and reasonable warning since at least May 9, 2007. The PRODUCTS  
2 continue to be distributed and sold in California without the requisite warning information.

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

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

12 21. Individuals using or handling the PRODUCTS are exposed to the LISTED  
13 CHEMICALS in excess of the levels determined by the State of California to cause "no  
14 observable effect" or "no significant risk", as applicable, within the meaning of H&S Code  
15 §25249.10(c).

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

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

21 **FIRST CAUSE OF ACTION**  
22 **(Violations of Health and Safety Code § 25249.6, et seq.)**

23 24. Plaintiff realleges and incorporates by reference Paragraphs 1 through 23,  
24 inclusive, as if specifically set forth herein.

25 25. On March 5, 2007, Plaintiff sent a 60-Day Notice of Proposition 65 violations to  
26 the requisite public enforcement agencies and to a retailer of Defendant's products. The notice  
was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d)

1 and the statute's implementing regulations regarding the notice of the violations to be given to  
2 certain public enforcement agencies and to the violator. The notice given included, *inter alia*,  
3 the following information: the name, address, and telephone number of the noticing individual;  
4 the name of the alleged violator; the statute violated; the approximate time period during which  
5 violations occurred; and descriptions of the violations, including the chemicals involved, the  
6 routes of toxic exposure, and the specific products or type of products causing the violations,  
7 and was issued as follows:

- 8 a. Defendant and the California Attorney General were provided copies of  
9 the 60-Day Notice by Certified Mail.
- 10 b. Defendant was provided a copy of a document entitled "The Safe  
11 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
12 Summary," which is also known as Appendix A to Title 27 of CCR  
13 §25903.
- 14 c. The California Attorney General was provided with a Certificate of Merit  
15 by the attorney for the noticing party, stating that there is a reasonable  
16 and meritorious case for this action, and attaching factual information  
17 sufficient to establish a basis for the certificate, including the identify of  
18 the persons consulted with and relied on by the certifier, and the facts  
19 studies, or other data reviewed by those persons, pursuant to H&S Code  
20 §25249.7(h)(2).

21 26. On May 9, 2008, Plaintiff sent a 60-Day Notice of Proposition 65 violations to  
22 the requisite public enforcement agencies and to Defendant. The notice was issued pursuant to,  
23 and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's  
24 implementing regulations regarding the notice of the violations to be given to certain public  
25 enforcement agencies and to the violator. The notice given included, *inter alia*, the following  
26 information: the name, address, and telephone number of the noticing individual; the name of  
the alleged violator; the statute violated; the approximate time period during which violations

1 occurred; and descriptions of the violations, including the chemicals involved, the routes of  
2 toxic exposure, and the specific products or type of products causing the violations, and was  
3 issued as follows:

- 4 a. Defendant and the California Attorney General were provided copies of  
5 the 60-Day Notice by Certified Mail.
- 6 b. Defendant was provided a copy of a document entitled "The Safe  
7 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
8 Summary," which is also known as Appendix A to Title 27 of CCR  
9 §25903.
- 10 c. The California Attorney General was provided with a Certificate of Merit  
11 by the attorney for the noticing party, stating that there is a reasonable  
12 and meritorious case for this action, and attaching factual information  
13 sufficient to establish a basis for the certificate, including the identify of  
14 the persons consulted with and relied on by the certifier, and the facts  
15 studies, or other data reviewed by those persons, pursuant to H&S Code  
16 §25249.7(h)(2).

17 27. The appropriate public enforcement agencies have failed to commence and  
18 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendant  
19 based on the allegations herein.

20 28. By committing the acts alleged in this Complaint, Defendant at all times relevant  
21 to this action, and continuing through the present, has violated H&S Code §25249.6 by, in the  
22 course of doing business, knowingly and intentionally exposing individuals who use or handle  
23 the PRODUCTS to the LISTED CHEMICALS, without first providing a clear and reasonable  
24 warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

25 29. By the above-described acts, Defendant is liable, pursuant to H&S Code  
26 §25249.7(b), for a civil penalty of up to \$2,500 per day for each unlawful exposure to a  
LISTED CHEMICAL from the PRODUCTS.



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

2  
3 DATED: July 16, 2008

LAW OFFICES OF ANDREW L. PACKARD

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6 Andrew L. Packard  
7 Attorneys for Plaintiff  
8 STEPHEN D. GILLETT  
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