COPY

ORIGINAL
E-filed
03 MAR 19 PM 3:03
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Robert S. Green (State Bar No. 136183)
Robert A. Jigarjian (State Bar No. 171107)
GREEN & JIGARJIAN LLP
235 Pine Street, 15th Floor
San Francisco, CA 94104
Telephone: (415) 477-6700
Facsimile: (415) 477-6710

Marc A. Topaz
SCHIFFRIN & BARROWAY, LLP
Three Bala Plaza East Suite 400
Bala Cynwyd, PA 19004
(610) 667-7706

Paul Geller
CAULEY GELLER BOWMAN COATES & RUDMAN, LLP
One Boca Place
2255 Glades Road, Suite 421A
Boca Raton, FL 33431
(561) 750-3000

Sam Rudman
CAULEY GELLER BOWMAN COATES & RUDMAN, LLP
200 Broadhollow Road, Suite 406
Melville, New York
(631) 367-7100

Attorneys for Plaintiff

MJJ

C03 1203

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHN A. CAMPAGNUOLA, individually and On Behalf of All Others Similarly Situated,

Plaintiff,

vs.

LANCE K. GORDON, DONALD P. FRANCIS, M.D. and VAXGEN, INC.,

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

Plaintiff, John A. Campagnuola, ("Campagnuola") individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his complaint against defendants, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorney, which included among other things, a review of the defendant's public documents, conference calls and announcements made by defendants, United States Security and Exchange Commission ("SEC") filings, wire and press releases published by and regarding VaxGen, Inc., ("VaxGen" or the "Company"), security analysts' reports and advisories about the Company, and information available on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal Class Action brought by the Plaintiff on behalf of himself and a Class consisting of all other persons who purchased the publicly traded securities of VaxGen Inc., (NASDAQ: VXGN), between August 6, 2002, and February 26, 2003, inclusive (the "Class Period"), seeking to recover damages caused by Defendants' violations of federal securities laws and pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. VaxGen, Inc., is engaged in the development and commercialization of AIDSVAX, a vaccine designed to prevent infection or disease caused by HIV (Human Immunodeficiency Virus), the virus that causes AIDS. The original AIDSVAX technology was developed by Genentech, Inc. and then licensed exclusively to the Company.

3. During the Class Period, defendants were carrying out the necessary clinical trials required to obtain approval from the Food and Drug Administration ("FDA") to promote AIDSVAX as an AIDS vaccine.

4. Throughout the Class Period, defendants made numerous fallacious statements regarding the progress of these clinical trials. This ongoing sham caused the Company's stock to become artificially inflated.

5. The inadequacy of AIDSVAX as an AIDS vaccine was proven repeatedly during

these clinical trials. Nevertheless, this fact, well known to the individual defendants throughout the Class Period, was never disclosed to the investing community.

6. On February 24, 2003, VaxGen shocked the market by disclosing that the Company's ongoing clinical studies failed to demonstrate any appreciable effectiveness as a treatment of HIV. Later that week, on February 26, 2003, it was revealed by the Wall Street Journal that the Company had improperly recognized favorable results in regards to clinical trials of its AIDS vaccine.

JURISDICTION AND VENUE

7. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act, (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

8. This Court has jurisdiction over the subject matter of this action pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.

9. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District. Additionally, the Company maintains its principal executive offices in this Judicial District.

10. In connection with the acts, conduct and other wrongs alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

THE PARTIES

11. Plaintiff, John A. Campagnuola, purchased VaxGen securities, as set forth in the accompanying certification attached hereto and incorporated herein by reference, and have suffered damages as a result of the wrongful acts of defendants as alleged herein.

12. Defendant VaxGen, develops, manufactures and commercializes biologic products for the prevention and treatment of infectious disease. VaxGen is a Delaware

corporation with its principal executive offices located at 1000 Marina Blvd., Suite 200 Brisbane, California, 94005.

13. Defendant, Lance K. Gordon ("Gordon"), has served as Chief Executive Officer and a Director since September 2001.

14. Defendant, Dr. Donald P. Francis ("Francis"), co-founded the Company and has served as the President and as a Director at all relevant times.

15. Defendants Gordon and Francis are collectively referred to hereafter as the "Individual Defendants." During the Class Period, each of the Individual Defendants made various statements regarding the Company's financial results and condition in VaxGen press releases, SEC filings and other public disclosures.

16. During the Class Period, each of the Individual Defendants, as senior executive officers and/or directors of VaxGen, were privy to non-public information concerning its business, finances, products, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or recklessly disregarded the fact that adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public.

17. Each of the Individual Defendants are liable as a direct participant with respect to the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior executive officers and directors were each a "controlling person" within the meaning of Section 20 of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their position of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of VaxGen's business.

18. The Individual Defendants, because of their positions with the Company, were provided with copies of the Company's reports and press releases alleged herein to be misleading,

prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the Individual Defendants had the opportunity to commit the fraudulent acts alleged herein.

19. Individual Defendants are liable, jointly and severally, as direct participants in and co-conspirators of, the wrongs complained of herein.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action as a federal class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class (the "Class"), consisting of all those who purchased the securities of VaxGen between August 6, 2002 to February 26, 2003, inclusive, (the "Class Period") and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

21. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, VaxGen securities were actively traded on the NASDAQ National Market ("NASDAQ"). VaxGen has approximately 14.5 million shares actively trading on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class.

22. Plaintiffs' claims are typical of the claims of the members of the Class, because plaintiffs and all of the Class members sustained damages arising out of defendants' wrongful conduct complained of herein.

23. Plaintiff will fairly and adequately protect the interests of the Class members and have retained counsel who are experienced and competent in class actions and securities litigation.

24. A Class Action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Class may be relatively small, the expense

and burden of individual litigation make it impossible for the members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

25. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members, in that defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) Whether the Company's publicly disseminated press releases and statements during the Class Period omitted and/or misrepresented material facts;

(c) Whether defendants breached any duty to convey material facts or to correct material acts previously disseminated;

(d) Whether defendants participated in and pursued the fraudulent scheme or course of business complained of;

(e) Whether the defendants acted willfully, with knowledge or recklessly, in omitting and/or misrepresenting material facts;

(f) Whether the market prices of the VaxGen's securities during the Class Period were artificially inflated due to material non-disclosures and/or misrepresentations complained of herein; and

(g) Whether the members of the Class have sustained damages and, if so, what is the appropriate measure of damages.

SUBSTANTIVE ALLEGATIONS
Materially False and Misleading Statements Made During the Class Period

25. The Class Period begins on August 6, 2002. On that day, VaxGen issued a press release highlighting fiscal second quarter results for the period ending on June 30, 2002.

26. Although the Company reported a net loss of $ 6.7 million, or $ 0.46 per share,

the loss was accredited to expenditures connected to the completion of the Company's ongoing clinical trials. The Company reiterated in the August 6, 2002 press release, that it had ended the quarter with $35.8 million in cash and securities.

27. Regarding the ongoing clinical trials for its AIDS vaccine, the Company stated that since the beginning of the second quarter, VaxGen had: (i) completed the seventh consecutive safety and conduct review of its Phase III trials;[1] (ii) revised its license and supply agreement with Genentech, Inc., on more favorable terms; and (iii) had hired Piers Whitehead, a leading vaccine industry expert, as vice president of Corporate and Business Development.

28. On August 14, 2002, the Company filed its Form 10-Q with the SEC for the period ended June 30, 2002. This filing reiterated the financial results distributed by the defendants in the August 6, 2002 press release. This filing was signed by Defendant Gordon and with regards to AIDSVAX, the Company made the following representations:

> In February 2002, we and a group of South Korean investors announced the formation of a joint venture, which intends to raise up to approximately $122 million, consisting of up to approximately $52 million in cash, a $40 million bank loan and an in-kind investment of cell culture technology and production support valued at a minimum of $30 million, to build and operate a facility in Incheon, South Korea, to manufacture AIDSVAX. We have no further funding obligation to Celltrion. The joint venture also intends to contribute $7 million towards construction of a smaller facility in the South San Francisco, California area. The facility is intended to support the licensure and commercial launch of AIDSVAX. We would fund any additional capital costs related to the smaller facility.
>
> We believe that both facilities, once constructed would be designed for commercial manufacture of AIDSVAX, if it proves safe and effective and is licensed by the U.S. Food and Drug Administration. The South Korean investors participating in the joint venture, known as Celltrion Inc., are Nexol Corp., Nexol Biotech Co. Ltd., Korea Tobacco & Ginseng Corp., and J. Stephen & Co. Ventures Ltd.
>
> In its first phase of development, expected to be completed by 2005, we believe the Incheon facility will be capable of producing up to 200 million doses of AIDSVAX annually. Our facility in the South San Francisco area could produce up to 10 million doses of the AIDS vaccine annually and may also be used to develop other

---

[1] Most clinical trials are designated as Phase I, II, or III, based on the type of questions that study is seeking to answer. These phases are defined by the Food and Drug Administration in the Code of Federal Regulations. In Phase I clinical trials, researchers test a new drug or treatment in a small group of people (20-80) for the first time to evaluate its safety, determine a safe dosage range, and identify side effects. In Phase II clinical trials, the study drug or treatment is given to a larger group of people (100-300) to see if it is effective and to further evaluate its safety. In Phase III studies, the study drug or treatment is given to large groups of people (1,000-3,000) to confirm its effectiveness, monitor side effects, compare it to commonly used treatments, and collect information that will allow the drug or treatment to be used safely.

pharmaceutical products when it is licensed and operational, **which we believe will occur in 2005.**

We expect to complete construction of our facility by the middle of 2003 and Celltrion the Incheon facility by the end of 2004. Additional time will be required to validate and license each facility. If AIDSVAX proves to be safe and effective, we intend to use the South San Francisco area facility to validate its manufacturing process, which would be a key component of its subsequent regulatory submission to the FDA. This facility, which will be located near our research and development facility, is expected to be used for commercial manufacturing of AIDSVAX at least through commissioning of the Incheon facility. (Emphasis added)

29. The market reacted favorably to the information published by the company in the August 6, 2002 press release and the August 14, 2002 SEC filing. The stock price rose by 42% over this period, from a closing price of $6.10 per share on August 6, 2002, to a close of $8.68 per share on August 30, 2002.

30. The statements referred to in paragraphs 28 to 30 above were each materially false and misleading because:

(a) AIDSVAX was proving to be an ineffective vaccine against AIDS in the Company's clinical trials; and

(b) that the Defendants knew that based on these clinical results, the vaccine would not meet regulatory approval in the United States.

31. On October 21, 2002, the Company announced in a press release that VaxGen's Phase III trial in Thailand had cleared scheduled safety reviews. The press release specifically noted:

VaxGen is conducting two Phase III trials, one in Thailand and another in North America and Europe. The oversight board, or Data and Safety Monitoring Board (DSMB), completed its final safety review of the trial in North America and Europe in April 2002 and therefore focused solely on the trial in Thailand in its most recent evaluation.

In its seventh review of the Thai trial, the DSMB found that VaxGen's AIDS vaccine candidate, AIDSVAX B/E, continues to exhibit a very good safety profile. More than 32,000 injections of AIDSVAX have been administered since it entered human clinical trials. VaxGen is testing AIDSVAX B/B in North American and Europe.

32. On November 5, 2002 the Company announced in a press release, its third quarter 2002 fiscal results. The Company noted that it had recently been awarded a $3.3 million contract to supply AIDSVAX to a forthcoming Phase III trial in Thailand funded by the National Institutes of Health and conducted by the U.S. Army. In a conference call following the

November 5, 2002 press release, Defendant Gordon commenting on the commercial viability of The Company's AIDS vaccine noted:

> The final point, I'll give you a little more detail on here, VaxGen received very recently a contract with the U.S. National Institute of Health to supply vaccine for a large field trial which is anticipated to start in March of next year in Thailand. This additional field study is incremental to the studies being done on AIDSVAX and may result in additional indications in market expansions for VaxGen's product.

33. Defendant Francis also commented on the market potential of the AIDS vaccine:

> I think, as all of you know, we have an outside data safety monitoring board that reviews these two trials, both the North American and European trials and the Thai trial, called the Data and Safety Monitoring board, and they have now reviewed this every six months from the beginning of the trial, and each time we get remarkable information, and that information is – has been good news at each meeting and those reviews really deal with two issues.

34. On November 15, 2002, the Company filed its Form 10-Q with the SEC for the period ended September 30, 2002. This filing reiterated the financial results distributed by the defendants in the November 5, 2002 press release. This filing was signed by Defendant Gordon. In regards to AIDSVAX the Company made the following representations:

> Our facility in South San Francisco could produce up to 10 million doses of the AIDS vaccine annually and may also be used to develop other pharmaceutical products when it is licensed and operational, **which we believe will occur in 2005.** (Emphasis added)

35. The market again reacted favorably to the information published by the company in the November 5, 2002 press release and conference calls, and the November 15, 2002 SEC filing. The stock price climbed to a closing price of $19.05 on November 15, 2002, a 212% gain over the closing price of $6.10 per share on August 6, 2002, the start of the Class Period.

36. The statements referred to in paragraphs 32 to 35 above were each materially false and misleading because:

(a) AIDSVAX was proving ineffective in the Company's clinical trials; and

(b) that the efficacy of the vaccine would not meet regulatory approval in the United States.

37. On December 16, 2002, the Company announced in a press release that the U.S. Food and Drug Administration (FDA) had designated the Company's HIV/AIDS vaccine

candidates, AIDSVAX B/B and AIDSVAX B/E, as Fast Track Products.[2] The significance of the Fast Track designation was that it would enable rapid regulatory review of AIDSVAX. At the time AIDSVAX B/B and AIDSVAX B/E were the only preventive AIDS vaccine candidates to advance to Phase III clinical trials. VaxGen also noted that it was nearing the completion of its Phase III trial of AIDSVAX B/E in Thailand.

38. By the end of the year, the market viewed the Company as an appealing investment, in fact at the close of trading on December 30, 2002, the stock traded at $19.31.

39. On January 22, 2003, VaxGen, reiterated in a press release that it planned to announce the results of its first Phase III trial for its AIDS vaccine before the end of March 2003. Specifically the Company stated:

> Other than this press release, VaxGen will make no further comment on the trading activity in its stock today. A rumor reported on the Internet today indicated that the company's stock had fallen because the Phase III trial mentioned above had produced unfavorable results. **Once again, no data are available yet to conclude if or how effective the vaccine is.** (Emphasis added)

40. The statements in paragraph 40 were materially false and misrepresented the results of the clinical trials because the defendants knew that:

(a) the efficacy rate of AIDSVAX would not be approved by national and international regulatory authorities based on these Phase III trial on either a "fast track" approval process or otherwise; and

(b) that AIDSVAX would not be a marketable product for a very long time.

THE TRUTH BEGINS TO EMERGE

41. On February 24, 2003, VaxGen announced the results from the Phase III trials of AIDSVAX, and according to the results disclosed, there were no meaningful differences in infection rates for the AIDSVAX-treated patients.

42. This partial disclosure shocked the market and caused the value of the Vangex shares to lose over 47% of its value from a closing price $13.02 on Friday, February 21, 2003 to

---

[2]Under the FDA Modernization Act of 1997, the Fast Track Program of the FDA is designed to expedite the review of a new drug that is intended for the treatment (or prevention) of a serious or life-threatening condition, and demonstrates the potential of a drug candidate to address unmet medical needs for such a condition.

a close of $6.86 on Monday, February 24, 2003.

43. Later that week, on February 26, 2003, The Wall Street Journal published an article entitled "VaxGen Statistic Is Weaker Than Firm Initially Claimed." The article noted that Lance Ignon, VaxGen's vice president for communications, admitted that the company had not taken into account statistical 'penalties' designed to avoid the release of erroneous information. The article stated in part:

> On Monday, VaxGen revealed that a three-year test of its AIDS vaccine, Aidsvax, had on an overall basis failed to protect volunteers from infection by HIV, the AIDS virus. But in an ethnic subgroup of 498 non-white, non-Hispanic volunteers, VaxGen said the vaccine appeared to provide protection in the range of 30% to 84%.
>
> That analysis, the company said, had less than a 1% chance of being due to random chance, making it highly statistically significant. VaxGen President Donald Francis touted the results as evidence that Aidsvax can protect against HIV infection, although he also acknowledged they reflected preliminary analysis and could turn out to be a "statistical fluke."
>
> Outside scientists and AIDS activists have criticized the claim of partial efficacy, largely because it was based on an analysis of just 29 HIV infections distributed between vaccinated volunteers in that subgroup and those who received a placebo.
>
> Wednesday, however, Lance Ignon, VaxGen's vice president for communications, admitted that the company hadn't taken those penalties after all. Mr. Ignon said he didn't know how the erroneous information was released, adding that the company was "still trying to figure that out."

44. Before the February 26, 2003 article, VaxGen claimed it had followed good statistical practice by taking "penalties" related to its analyses of multiple subgroups. Such penalties are statistically relevant in regards to the efficacy of a tested vaccine and are designed to reduce the statistical significance of results obtained from slicing a body of data into many smaller pieces. Thus the failure of the full trial means a viable AIDS vaccine is still years away.

UNDISCLOSED ADVERSE INFORMATION

45. The market for VaxGen securities was open, well-developed and efficient at all relevant times during the class period. As a result of these materially false and misleading statements and failures to disclose, the Company's securities traded at artificially inflated prices during the Class Period. The artificial inflation continued until the time VaxGen admitted that its growth was slowing and these admissions were communicated to, and/or digested by, the securities markets. Plaintiffs and other members of the Class purchased or otherwise acquired

VaxGen securities relying upon the integrity of the market price of VaxGen's common stock and market information relating to VaxGen, and have been damaged thereby.

46. During the Class Period, defendants materially misled the investing public, thereby inflating the price of VaxGen securities, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, including, inter alia:

(a) That throughout the Class Period, each defendant knew or recklessly disregarded the truth regarding VaxGen AIDS vaccine; and,

(b) As a result of these false and misleading statements, the Company's shares were traded at artificially inflated prices, causing damage to the plaintiff and the other members of the Class.

47. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about VaxGen's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of VaxGen and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

SCIENTER ALLEGATIONS

48. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements, issued or disseminated by or in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or

documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding VaxGen and its business practices, their control over and/or receipt of VaxGen's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning VaxGen were active and culpable participants in the fraudulent scheme alleged herein.

49. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants.

STATUTORY SAFE HARBOR

50. The federal statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Further, none of the statements pleaded herein which were forward-looking statements were identified as "forward-looking statements" when made. Nor was it stated that actual results "could differ materially from those projected." Nor were the forward-looking statements pleaded accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from the statements made therein. Defendants are liable for the forward-looking statements pleaded because, at the time each of those forward-looking statements was made, the speaker knew the forward-looking statement was false and the forward-looking statement was authorized and/or approved by an executive officer of VaxGen who knew that those statements were false when made.

///

////

///

APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-MARKET DOCTRINE

51. At all relevant times, the market for VaxGen's securities was an efficient market for the following reasons, among others:

(a) VaxGen's securities met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, VaxGen filed periodic public reports with the SEC and the NASDAQ;

(c) VaxGen regularly communicated with public investors via established market communication mechanisms, including the regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services. Each of these releases was publicly available and entered into the marketplace; and

(d) VaxGen was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports were publicly available and entered the public marketplace.

52. As a result of the foregoing, the market for VaxGen's securities promptly digested current information regarding VaxGen from all publicly available sources and reflected such information in VaxGen's securities pricing. Under these circumstances, all purchasers of VaxGen's securities during the Class Period suffered similar injury through their purchase of VaxGen's securities at artificially inflated prices and a presumption of reliance applies.

FIRST CLAIM

Violation Of Section 10(b) Of The Exchange Act And Rule 10b-5 Promulgated Thereunder Against All Defendants

53. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein. This claim is asserted against all defendants.

54. During the Class Period, defendant VaxGen and the Individual Defendants, and

each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: a) deceive the investing public, including plaintiff and other Class members, as alleged herein; b) artificially inflate and maintain the market price of VaxGen's securities; and c) cause plaintiff and other members of the Class to purchase VaxGen securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants VaxGen and the Individual Defendants, and each of them, took the actions set forth herein.

55. These defendants: a) employed devices, schemes, and artifices to defraud; b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for VaxGen's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. These defendants are sued either as primary participants in the wrongful and illegal conduct charged herein. The Individual Defendants are also sued as controlling persons of VaxGen, as alleged below.

56. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and performance so that the market prices of the Company's publicly traded securities would be based on truthful, complete and accurate information.

57. VaxGen and the Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, business practices, performance, operations and future prospects

of VaxGen as specified herein.

58. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of VaxGen's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about VaxGen and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of VaxGen's securities during the Class Period.

59. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: a) each of the Individual Defendants was a high-level executives and/or director at the Company during the Class Period; b) each of the Individual Defendants, by virtue of his responsibilities and activities as a senior executive officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; c) the Individual Defendants enjoyed significant personal contact and familiarity with each other and were advised of and had access to other members of the Company's management team, internal reports, and other data and information about the Company's financial condition and performance at all relevant times; and d) the Individual Defendants were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

60. These defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing VaxGen's operating condition, business practices and

future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's financial condition and performance throughout the Class Period, the Individual Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

61. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of VaxGen's securities were artificially inflated during the Class Period. In ignorance of the fact that market prices of VaxGen's publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired VaxGen securities during the Class Period at artificially high prices and were damaged thereby.

62. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known of the true performance, business practices, future prospects and intrinsic value of VaxGen, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their VaxGen securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

63. By virtue of the foregoing, VaxGen and the Individual Defendants have each violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

64. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

SECOND CLAIM

Violation Of Section 20(a) Of The Exchange Act Against the Individual Defendants

65. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein. This claim is asserted against the Individual Defendants.

66. Each of the Individual Defendants acted as a controlling person of VaxGen within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's actual performance, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading. Each of the Individual Defendants was provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

67. In addition, each of the Individual Defendants had direct involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

68. As set forth above, VaxGen and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their controlling positions, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

STATUTE OF LIMITATIONS

69. This action is brought within the time limit prescribed by the statute of limitations for sections 10(b)and 20(a) of the Securities Exchange Act of 1934,15 U.S.C. §§78j(b) and

78t(a), as modified by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. §78u-4. Plaintiff only became aware of the crucial facts on February 26, 2003.

PRAYER FOR RELIEF

70. WHEREFORE, Plaintiff on behalf of himself and of the Class pray for relief and judgment, as follows:

A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;

B. Awarding plaintiffs and the members of the Class damages in an amount which may be proven at trial, together with interest thereon;

C. Awarding plaintiffs and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;

D. Awarding such other and further relief as this Court may deem just and proper including any extraordinary equitable and/or injunctive relief as permitted by law or equity to attach, impound or otherwise restrict the defendants' assets to assure plaintiffs have an effective remedy; and

E. Such other relief as this Court deems appropriate.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: March 19, 2003

Respectfully submitted,

GREEN & JIGARJIAN LLP

By: _____
Robert A. Jigarjian

Robert S. Green
235 Pine Street, 15th Floor
San Francisco, CA 94104
Telephone: (415) 477-6700
Facsimile: (415) 477-6710

SCHIFFRIN & BARROWAY, LLP
Marc A. Topaz, Esq.
Three Bala Plaza East Suite 400
Bala Cynwyd, PA 19004
(610) 667-7706

CAULEY GELLER BOWMAN COATES & RUDMAN, LLP
Paul Geller, Esq.
One Boca Place
2255 Glades Road, Suite 421A
Boca Raton, FL 33431
(561) 750-3000

CAULEY GELLER BOWMAN COATES & RUDMAN, LLP
Sam Rudman, Esq.
200 Broadhollow Road, Suite 406
Melville, New York
(631) 367-7100

Attorneys for Plaintiff