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6 Attorneys for Plaintiff  
7 STEPHEN D. GILLETT

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

10  
11 STEPHEN D. GILLETT, an individual, ) CASE NO. CGC-07-465289  
12 Plaintiff, )  
13 v. ) **[PROPOSED] STIPULATED CONSENT**  
14 NEXGEN PHARMA, INC., ) **JUDGMENT**  
15 Defendant. )  
16

17 IT IS HEREBY STIPULATED AND AGREED by the parties hereto, as follows:

18 **WHEREAS:**

19 A. Stephen D. Gillett is a citizen enforcer of Proposition 65 who resides in San  
20 Francisco, California.

21 B. NEXGEN PHARMA, INC. ("NEXGEN") is a contract manufacturer of dietary  
22 supplement formulations containing lead and lead compounds sold in the State of California  
23 (hereafter referred to as the "Products");

24 C. The names and product numbers of each of the Products covered under this  
25 Agreement, as currently formulated and labeled, are set forth in Exhibit A attached hereto;

26 D. On February 27, 1987, the State of California officially listed the chemical lead as a

1 chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code §  
2 25249.8;

3 E. On October 1, 1992, the State of California officially listed the chemicals lead and  
4 lead compounds as chemicals known to cause cancer, pursuant to California Health and Safety  
5 Code § 25249.8;

6 F. The Products have been sold by NEXGEN for use in California since at least  
7 December 15, 2005;

8 G. On May 15, 2007, Mr. Gillett served NEXGEN and each of the appropriate public  
9 enforcement agencies with a document entitled "60-Day Notice" that provided NEXGEN and the  
10 public enforcement agencies with notice that NEXGEN was in violation of California Health and  
11 Safety Code § 25249.6 *et seq.* ("Proposition 65") for failing to warn purchasers and individuals  
12 using the Products that the use of the Products exposes them to lead, a chemical known to the  
13 State of California to cause cancer and/or reproductive toxicity (a copy of the 60-Day Notice is  
14 attached hereto as Exhibit B);

15 H. The Action was brought by Mr. Gillett in the public interest at least sixty (60) days  
16 after Mr. Gillett provided notice of the Proposition 65 violations to NEXGEN and the  
17 appropriate public enforcement agencies and none of the public enforcement agencies had  
18 commenced and begun diligently prosecuting an action against NEXGEN for such violations;  
19 and,

20 I. The "Effective Date" of this Agreement shall be the date upon which this Consent  
21 Judgment is entered by the Court;

22 **NOW, THEREFORE**, in consideration of the promises, covenants and agreements  
23 herein contained and for other consideration, the sufficiency and adequacy of which is hereby  
24 acknowledged by the parties:

25 1. **Immediate Provision of Clear and Reasonable Health Hazard Warnings For**  
26 **All Products.** Beginning on or before October 1, 2007, NEXGEN agrees that it will not ship (or

1 cause to be shipped) for sale or use in California any of the Products unless each such unit of the  
2 Product bears the following warning statement on its individual unit label packaging:

3 **WARNING: This product contains lead and other substances**  
4 **known to the State of California to cause cancer and/or birth**  
5 **defects or other reproductive harm.**

6 The warning statement shall be prominent and displayed on the unit packaging of each Product  
7 with such conspicuousness, as compared with other words, statements, or designs so as to render  
8 it likely to be read and understood by an ordinary individual purchasing or using the Product.

9 2. **Change in Warning Obligations.** In the event that NEXGEN reasonably  
10 believes that, with respect to any Product, a Product has been reformulated, relabeled or a  
11 “naturally occurring” level of lead, lead compounds, or other chemicals has been established as  
12 provided in 22 CCR Sec. 12501, such that when used at the maximum dosage recommended on  
13 the unit packaging or when used at any dosage otherwise recommended or reasonably  
14 anticipated, the specific Product does not cause an exposure to lead, lead compounds, or other  
15 chemicals triggering a warning within the meaning of Proposition 65, NEXGEN shall have the  
16 right to ship such Product (“Reformulated Product”) without the warning statement in Section 1.  
17 Prior to the first such shipment of a Reformulated Product by Nexgen, NEXGEN shall notify Mr.  
18 Gillett of the change in the Product’s status to “Reformulated” and provide Mr. Gillett with: (1) a  
19 current test result and/or new label or evidence of the “naturally occurring” level for such  
20 Reformulated Product; and (2) an exemplar of such Reformulated Product. The test shall be  
21 conducted by an EPA-accredited laboratory (or such other laboratory as the Parties may agree)  
22 using EPA Method 6020 (ICP-MS) and shall test for lead, mercury, cadmium and arsenic. Upon  
23 request by Mr. Gillett, the Parties shall meet and confer (in person or telephonically) regarding  
24 the data submitted to Mr. Gillett. In the event that the Parties are unable to reach an accord as to  
25 whether any specific Product has in fact been reformulated or relabeled by NEXGEN, or whether  
26 a “naturally occurring” level can be properly established for that Reformulated Product, such that  
it does not cause an exposure to lead, mercury, cadmium or arsenic within the meaning of

1 Proposition 65, Mr. Gillett shall have the right to petition the Court to enforce this agreement's  
2 warning obligations as to that specific Product. In any such enforcement proceeding, NEXGEN  
3 shall bear the burden of demonstrating, by a showing of a preponderance of the evidence, that the  
4 Product has been reformulated or relabeled, or that a "naturally occurring" level can be properly  
5 established, such that it does not cause an exposure to lead, mercury, cadmium or arsenic within  
6 the meaning of Proposition 65. The prevailing party in any such dispute shall be awarded  
7 reasonable fees and costs incurred in connection with the motion.

8       3.     **Notification To Product Resellers.** Within thirty days (30) days of the Effective  
9 Date of this Agreement, NEXGEN shall send a Notification Letter to each of its customers who  
10 have purchased any of the Products from NEXGEN in the one hundred and eighty (180) days  
11 preceding the Effective Date of this Consent Judgment. This Notification Letter shall notify  
12 NEXGEN's customers regarding the warning requirements of Proposition 65 as they apply to  
13 each of the Products. An exemplar of the verbatim language of the Notification Letter is attached  
14 hereto as **Exhibit C**.

15       4.     **Ongoing Annual Testing Program.** Beginning in 2008, NEXGEN shall  
16 implement an ongoing annual testing program for each of its products that contain herbs or food  
17 products that it ships (or causes to be shipped) for sale or use in California, including but not  
18 limited to all Products and Reformulated Products as defined herein. The tests shall be  
19 conducted by an EPA-accredited laboratory (or such other laboratory as the Parties may agree)  
20 using EPA Method 6020 (ICP-MS) and shall include testing for lead, mercury, cadmium, and  
21 arsenic. Upon request by Mr. Gillett during the first two (2) years of such annual testing,  
22 NEXGEN shall provide all test results from its most recent Annual Testing to Mr. Gillett within  
23 thirty (30) days.

24       5.     **Civil Penalty Assessment.** Within five (5) days of service of the Notice of Entry  
25 of this Consent Judgment, NEXGEN agrees to pay a civil penalty in the amount of \$25,000.00  
26 pursuant to Health & Safety Code §25249.7(b). Such payment shall be made to the "Law Offices

1 of Andrew L. Packard Attorney Client Trust Account”; Plaintiff shall remit 75% of this amount  
2 to the State of California pursuant to Health & Safety Code §25192.

3       **6. Payment In Lieu of Further Civil Penalties.** Within five (5) days of service of  
4 the Notice of Entry of this Consent Judgment, NEXGEN agrees to make an additional payment  
5 in lieu of further civil penalties in the amount of \$60,000.00 to the Rose Foundation for  
6 Communities and the Environment for projects to reduce exposures to toxic chemicals, and to  
7 increase consumer, worker and community awareness of the health hazards posed by toxic  
8 chemicals. Payment of these funds shall be payable to “Rose Foundation for Communities and  
9 the Environment” and remitted to the Rose Foundation, Attn: Tim Little, 6008 College Ave., Ste.  
10 10 Oakland, CA 94618 (510) 658-0702 within five (5) business days of service on NEXGEN of  
11 the Notice of the Effective Date of this Consent Judgment.

12       **7. Reimbursement of Plaintiff’s Fees and Costs.** Within five (5) days of service of  
13 the Notice of Entry of this Consent Judgment NEXGEN agrees to reimburse Plaintiff in the  
14 amount of \$14,750 to defray Plaintiff’s reasonable investigative, expert, consultant and attorneys’  
15 fees and costs, and all other costs incurred as a result of investigating and bringing this matter to  
16 NEXGEN’s attention, and negotiating a settlement in the public interest. Such payment shall be  
17 payable to the Law Offices of Andrew L. Packard Attorney Client Trust Account and remitted to  
18 the firm’s address noted in the Notice provision below.

19       **8. No Admission.** Nothing in this Stipulated Consent Judgment shall be construed  
20 as an admission by NEXGEN of any fact, finding, issue of law, or violation of law, nor shall  
21 compliance with this Stipulated Consent Judgment constitute or be construed as an admission by  
22 NEXGEN of any fact, finding, conclusion, issue of law or violation of law. However, this  
23 section shall not diminish or otherwise affect the obligations, responsibilities and duties of  
24 NEXGEN under this Stipulated Consent Judgment.

25       **9. Plaintiff’s Release of NEXGEN.** Plaintiff, acting on behalf of itself and acting  
26 on behalf of the general public, waives all rights to institute any form of legal action against

1 NEXGEN, and its parents, subsidiaries, affiliates, shareholders, directors, employees, customers,  
2 and any other person or entity in the course of doing business who distribute, market or sell the  
3 Products sold to them through NEXGEN, brought under Proposition 65 concerning any alleged  
4 failure to provide adequate health hazard warnings for consumer exposures to lead or lead  
5 compounds in the Products sold before the entry of this Consent Judgment.

6 10. Nothing in this release is intended to apply to any occupational or environmental  
7 exposures arising under Proposition 65 nor shall it apply to any NEXGEN products not set forth  
8 on Exhibit A to this Consent Judgment.

9 11. **NEXGEN's Release of Mr. Gillett.** NEXGEN, by this Agreement, waives all  
10 rights to institute any form of legal action against Mr. Gillett for all actions or statements made or  
11 undertaken by Mr. Gillett in the course of seeking enforcement of Proposition 65 against  
12 NEXGEN.

13 12. **Notice to the California Attorney General's Office.** Upon execution of this  
14 [Proposed] Consent Judgment by all Parties, Plaintiff shall notice a Motion for Approval & Entry  
15 of Consent Judgment in the San Francisco Superior Court pursuant to Title 11, Cal. Code of  
16 Regs. §3000, et seq. This motion shall be served upon all of the Parties to the Action and upon  
17 the California Attorney General's Office. In the event that the Court fails to approve and order  
18 entry of the judgment, this Consent Judgment shall become null and void upon the election of  
19 any Party as to them and upon written notice to all of the Parties to the Action pursuant to the  
20 notice provisions herein. Defendant and Plaintiff shall use best efforts to support entry of this  
21 Consent Judgment in the form submitted to the Office of the Attorney General. If the Attorney  
22 General objects in writing to any term in this Consent Judgment, the Parties shall use best efforts  
23 to resolve the concern in a timely manner and prior to the hearing on the motion to approve this  
24 Consent Judgment. If the Parties cannot resolve an objection of the Attorney General, then  
25 Plaintiff and Defendant shall proceed with seeking entry of an order by the court approving this  
26 Consent Judgment in the form originally submitted to the Office of the Attorney General. If the

1 Attorney General elects to file papers with the Court stating that the People shall appear at the  
2 hearing for entry of this Consent Judgment so as to oppose entry of the Consent Judgment, then a  
3 party may withdraw from this Consent Judgment prior to the date of the hearing, with notice to  
4 all parties and the Attorney General, and upon such notice this Consent Judgment shall be null  
5 and void.

6 13. **Severability.** In the event that any of the provisions of this Agreement are held  
7 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
8 affected.

9 14. **Enforcement.** In the event that a dispute arises with respect to any of the  
10 provisions of this Agreement, this Agreement may be enforced pursuant to Code of Civil  
11 Procedure § 664.6 or any other valid provision of law. The prevailing party in any such dispute  
12 shall be awarded all reasonable fees and costs incurred.

13 15. **Governing Law.** The terms of this Agreement shall be governed by the laws of  
14 the State of California.

15 16. **Notices.** All correspondence and notices required to be provided under this  
16 Agreement shall be in writing and shall be sent by first class registered or certified mail  
17 addressed as follows:

18 All correspondence to Mr. Gillett shall be mailed to:  
19 Stephen D. Gillett  
20 c/o Andrew L. Packard  
21 The Law Offices of Andrew L. Packard  
22 319 Pleasant Street  
23 Petaluma, CA 94952

24 All correspondence to NEXGEN shall be mailed to:

25 Mark Nishi  
26 Nexgen Pharma, Inc.  
46 Corporate Park, Suite 100  
Irvine, CA 92606

And to:

1 Irvine, CA 92606

2 And to:

3 James W. Baker, Esq.  
4 Law Offices of James W. Baker  
5 10636 Scripps Summit Court, Ste 115  
6 San Diego, CA 92131

7 **17. Integration & Modification.** This Consent Judgment, together with the Exhibits  
8 hereto which are specifically incorporated herein by this reference, constitutes the entire  
9 agreement between the parties relating to the rights and obligations herein granted and assumed,  
10 and supersedes all prior agreements and understandings between the parties. This Consent  
11 Judgment may be modified only upon the written agreement of the parties.

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

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

18 DATED: 9/18/2007 BY: [Signature]  
19 Stephen D. Gillett

20  
21 DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
22 Mark Nishi, Chief Financial Officer  
23 Nexgen Pharma, Inc.

24  
25 IT IS SO ORDERED

26  
STIPULATED CONSENT JUDGMENT

1 And to:

2 James W. Baker, Esq.  
3 Law Offices of James W. Baker  
4 10636 Scripps Summit Court, Ste 115  
5 San Diego, CA 92131

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12 which shall be deemed an original, and all of which, when taken together, shall constitute one  
13 and the same document.

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

17 DATED: \_\_\_\_\_

18 BY: \_\_\_\_\_  
19 Stephen D. Gillett

20 DATED: 9/19/07

21 BY: Mark Nishi  
22 Mark Nishi, Chief Financial Officer  
23 Nexgen Pharma, Inc.

24 IT IS SO ORDERED

25 Dated: \_\_\_\_\_

26 \_\_\_\_\_  
Judge of the Superior Court

EXHIBIT A

Product #	Description
141	100% Organic Spirulina Veg Tabs
156	Joint Support Softgels
192	Complete Citrimax® Veg Tabs
515	Prenatal Multi Veg Tabs
517	Women's Multi Veg Tabs
518	Men's Multi Veg Tabs
537	Women's 45+ Multi Veg Tabs
538	Men's 45+ Multi Veg Tabs
541	Prenatal Complete® Veg Tabs
542	Life Multi Complete® Tabs
549	Hair, Skin & Nails Multi Veg Tabs
912	KVLB Veg Tabs
920	Bee Pollen 500 mg Veg Tabs
922	Olive Leaf Liquid Veg Caps
930	Black Cohosh Veg Caps
964	Ultimate Soy-Spirulina® Protein Powder Choc
965	Ultimate Soy-Spirulina® Protein Powder Vanilla
986	Hawthorn 500 mg Veg Caps
991	Wellness Booster Veg Caps
992	Wellness Defense Veg Tabs
999	Ultimate Ginger Complex® Veg Caps

**EXHIBIT B**

LAW OFFICES OF  
**ANDREW L. PACKARD**  
319 PLEASANT STREET, PETALUMA, CALIFORNIA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

May 15, 2007

Via Certified Mail

Mark Nishi, Chief Financial Officer  
Nexgen Pharma, Inc.  
46 Corporate Park, Suite 100  
Irvine, CA 92606

cc: Steve Brown, Agent for Service of Process  
17802 Gillette Avenue  
Irvine, CA 92614

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

Dear Mr. Nishi:

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 **Nexgen Pharma, Inc.** ("NEXGEN"). NEXGEN is a contract manufacturer of dietary supplements, pharmaceuticals, medical foods and OTC drugs. These ongoing violations arise out of exposures to lead and lead compounds from the consumer products listed on Attachment A hereto. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

**Products At Issue.** The Nexgen products listed on Exhibit A.

**Route of exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products by consumers as

May 12, 2007

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recommended on the product label. Accordingly, consumer exposures have occurred and continue to occur primarily through ingestion, but also may occur through inhalation and/or and dermal contact.

**Duration of violations.** Each of these ongoing violations has occurred on every day since at least May 15, 2006, 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 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 to avoid further unwarned exposures to lead in these products without protracted litigation. Mr. Gillett's address is Post Office Box 170142, San Francisco, California 94117. Tel. (415) 850-5233 and is represented by this firm in connection with this matter. Please direct all communications regarding this notice to Andrew L. Packard at the above-listed firm address and telephone number.

Very Truly Yours,



Andrew L. Packard

Attachments:

OEHHA Summary

Certificate of Merit (w/o AG attachments)

Certificate of Service

## Exhibit A

Product #	Product Name
141	100% Organic Spirulina Veg Tabs
156	Joint Support Softgels
192	Complete Citrimax® Veg Tabs
515	Prenatal Multi Veg Tabs
517	Women's Multi Veg Tabs
518	Men's Multi Veg Tabs
537	Women's 45+ Multi Veg Tabs
538	Men's 45+ Multi Veg Tabs
541	Prenatal Complete® Veg Tabs
542	Life Multi Complete® Tabs
549	Hair, Skin & Nails Multi Veg Tabs
912	KVLB Veg Tabs
920	Bee Pollen 500 mg Veg Tabs
922	Olive Leaf Liquid Veg Caps
930	Black Cohosh Veg Caps
964	Ultimate Soy-Spirulina® Protein Powder Choc
965	Ultimate Soy-Spirulina® Protein Powder Vanilla
986	Hawthorn 500 mg Veg Caps
991	Wellness Booster Veg Caps
992	Wellness Defense Veg Tabs
999	Ultimate Ginger Complex® Veg Caps

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

#### WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime.

The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

#### HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

CERTIFICATE OF MERIT

(re: Stephen D. Gillett's May 15, 2007 Notice of Proposition 65 Violation  
Issued to Nexgen Pharma, 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.

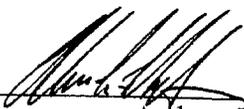
2. I am an attorney for the noticing party.

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: May 15, 2007

  
\_\_\_\_\_  
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 May 15, 2007, 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:

Mark Nishi, Chief Financial Officer  
Nexgen Pharma, Inc.  
46 Corporate Park, Suite 100  
Irvine, CA 92606

Steve Brown, Agent for Service of Process  
Nexgen Pharma, Inc.  
17802 Gillette Avenue  
Irvine, CA 92614

On May 15, 2007, 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 May 15, 2007, 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 US Postal Service Office for delivery by First Class Mail.

Executed on May 15, 2007, in Petaluma, California.



Erin Seymour

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  
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EXHIBIT C

[on Nexgen Letterhead]

[DATE]

**IMPORTANT NOTICE TO BUYERS OF  
NEXGEN PHARMA PRODUCTS**

Nexgen Pharma has initiated a compliance program regarding California's toxic exposure law, Health & Safety Code §25249.5, also referred to as Proposition 65. It is against California law to expose consumers to lead—or other potentially harmful substances—without providing a clear and reasonable warning concerning the health hazards associated with these substances (e.g., cancer; birth defects and other reproductive harm). The products you have purchased from Nexgen and appearing on Attachment A hereto contain levels of lead that require such a warning.

As of September 1, 2007 Nexgen will apply warnings to the products listed on Attachment A. Any Nexgen products you sell in California must have this warning label. If you resell these products (either in whole or in part) you are required to provide a clear and reasonable warning within the meaning of Proposition 65 to the California purchasers of the product. Failure to provide these warnings may result in your being subject to civil penalties of up to \$2,500 per violation and other sanctions. You should consult with a lawyer concerning your obligations under the law. The warning requirements described above are likely to apply to other herb products that you did not obtain from Nexgen. The only way to know is to have such products tested. For additional information regarding the requirements of Proposition 65, you should contact the Office of Environmental Health Hazard Assessment at 916-445-6900 or at [www.oehha.ca.gov](http://www.oehha.ca.gov).