

**SUMMONS ON FIRST AMENDED
(CITACION JUDICIAL) COMPLAINT**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

DESTINATION HOTELS AND RESORTS, INTERSTATE HOTELS,
LLC; CROSSROADS HOSPITALITY, LLC; PACIFICA HOST;
(Additional Parties Attachment form is attached)

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
CONSUMER ADVOCACY GROUP, INC., in the public interest

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ORIGINAL FILED

DEC 19 2008

**LOS ANGELES
SUPERIOR COURT**

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
LOS ANGELES SUPERIOR COURT-CENTRAL CIVIL WEST
600 Commonwealth Avenue
Los Angeles, CA 90005

CASE NUMBER: JCCP 4182
(Número del Caso):

BC 234630

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Reuben Yeroushalmi (SBN 193981), YEROUSHALMI & ASSOCIATES
3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010; Telephone No.: (213) 382-3183

DATE: DEC 19 2008 JOHN A. CLARKE, Clerk, by PARK ENG, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

4. other (specify):
5. by personal delivery on (date):



COPY

SHORT TITLE: SECOND HAND SMOKE CASES	CASE NUMBER: JCCP 4182
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

LODGIAN MANAGEMENT; WOODFIN SUITE HOTELS, LLC; OUTRIGGER LODGING SERVICES;
TARSADIA HOTELS; RUFFIAN SUITE CORP.; and DOES 1 to 100,

Page _____ of _____

Page 1 of 1

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges, on information and belief, as
2 follows:

- 3 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff") is a non-profit
4 corporation qualified to do business in the State of California, and brings this action in
5 the public interest as defined under Health and Safety Code section 25249.7(d).
- 6 2. Defendants DESTINATION HOTELS AND RESORTS, INC.; INTERSTATE HOTELS,
7 LLC; CROSSROADS HOSPITALITY, LLC; PACIFICA HOST; LODGIAN
8 MANAGEMENT; WOODFIN SUITE HOTELS, LLC; OUTRIGGER LODGING
9 SERVICES; TARSADIA; RUFFIAN SUITE CORP.; AND DOES 1 TO 100 are, and at
10 all times mentioned herein, have been qualified to do business in the State of California.
- 11 3. At all times mentioned herein, each of the defendants named herein was a person doing
12 business within the meaning of Health and Safety Code section 25249.11(a). Plaintiffs
13 are informed and believe and thereon allege that at all times mentioned herein, each
14 defendant had ten (10) or more employees.
- 15 4. Plaintiff is ignorant of the true names and capacities of defendants sued as DOES 1 to
16 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
17 will amend this complaint to allege their true names and capacities when ascertained.
18 Plaintiff is informed and believes, and thereon alleges that each of the fictitiously named
19 defendants is responsible in some manner for the occurrences herein alleged and the
20 damages caused thereby.
- 21 5. The Court has jurisdiction over this action pursuant to California Constitution Article VI,
22 Section 10, which grants the Superior Court original jurisdiction in all causes except
23 those given by statute to other trial courts. The statute under which this action is brought
24 does not specify any other basis of jurisdiction.

25 **FIRST CAUSE OF ACTION**

26 **(BY CONSUMER ADVOCACY GROUP, INC. AGAINST DESTINATION HOTELS**
27 **AND RESORTS, INC.; INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY,**
28 **LLC; PACIFICA HOST; LODGIAN MANAGEMENT; WOODFIN SUITE HOTELS,**

1 **LLC; OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN SUITE CORP.;**
2 **AND DOES 1 TO 100 FOR VIOLATION OF THE STATE OF CALIFORNIA'S**
3 **PROPOSITION 65 (HEALTH & SAFETY CODE § 25249.5, et. seq.)**

- 4 6. Plaintiff repeats and incorporates by reference paragraphs 1 through 5 of this complaint
5 as though fully set forth herein.
- 6 7. Plaintiff is informed and believes and thereon alleges that DESTINATION HOTELS
7 AND RESORTS, INC.; INTERSTATE HOTELS, LLC; CROSSROADS
8 HOSPITALITY, LLC; PACIFICA HOST; LODGIAN MANAGEMENT; WOODFIN
9 SUITE HOTELS, LLC; OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN
10 SUITE CORP.; AND DOES 1 TO 100 knowingly and intentionally sold, and thereby
11 exposed consumers to, cigars which contained, and the consumption of which exposed
12 purchasers thereof to, chemicals known to the State of California to cause cancer and
13 reproductive toxicity, as set forth in Health and Safety Code sections 25249.5, et seq.
14 (sometimes referred to throughout as Proposition 65), and the related California Code of
15 Regulations title 22 sections 12000 through 14000.
- 16 8. The Superior Courts of California entered previous consent judgments regarding the
17 manufacture, sale, and distribution of cigars and tobacco products under Proposition 65.
18 *See People ex rel. Van De Kamp v. Safeway Stores, et al.*, (San Francisco Superior Court
19 Case No.: 897576, Consent Judgments ordered Oct. 18, 1988) attached hereto as **Exhibit**
20 **A**; *People ex rel. Van De Kamp v. Safeway Stores, et al.*, (San Francisco Superior Court
21 Case No.: 897576, Consent Judgment ordered Nov. 20, 1990) attached hereto as **Exhibit**
22 **B** (collectively referred to as "Previous Consent Judgments"). The Previous Consent
23 Judgments are entitled to collateral estoppel effect as to the methods of compliance
24 regarding retailers of cigars and tobacco products' duty to provide warnings.
25 Specifically, the 1988 consent judgments required on-product warnings of various types.
26 The 1990 consent judgment enjoined, prohibited, and restrained retailers of cigars and
27 tobacco products from failing to provide Proposition 65-Compliant Warnings. (For the
28 purposes of this complaint, the terms "Proposition 65-Compliant Warning" and

1 “Proposition 65-Compliant Warnings” shall mean and refer to the language and manner
2 of display of such language required by the Previous Consent Judgments, including that
3 the required language be placed clearly and conspicuously, so that an ordinary retail
4 customer would reasonably notice it, on containers and display boxes of cigars and
5 tobacco products, and their contents if sold separately, that states that the product
6 contains/produces chemicals known to the State of California to cause cancer, birth
7 defects, and/or other reproductive harm, so that it is in compliance with Health and Safety
8 Code section 25249.5, *et seq.*, and the terms of the Previous Consent Judgments).

9 Accordingly, to the extent that they sold cigars and tobacco products, defendants
10 DESTINATION HOTELS AND RESORTS, INC.; INTERSTATE HOTELS, LLC;
11 CROSSROADS HOSPITALITY, LLC; PACIFICA HOST; LODGIAN
12 MANAGEMENT; WOODFIN SUITE HOTELS, LLC; OUTRIGGER LODGING
13 SERVICES; TARSADIA; RUFFIAN SUITE CORP.; AND DOES 1 TO 100, as retailers
14 of cigars and tobacco products, were entitled to take advantage of the methods of
15 compliance set forth in the Previous Consent Judgments and were likewise required to
16 abide by such Previous Consent Judgments.

17 9. Plaintiff is informed and believes, and thereon alleges that DESTINATION HOTELS
18 AND RESORTS, INC.; INTERSTATE HOTELS, LLC; CROSSROADS
19 HOSPITALITY, LLC; PACIFICA HOST; LODGIAN MANAGEMENT; WOODFIN
20 SUITE HOTELS, LLC; OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN
21 SUITE CORP.; AND DOES 1 TO 100, at all relevant times, failed to comply with the
22 methods of compliance set forth in the Previous Consent Judgments, and thereby failed to
23 provide Proposition 65-Compliant Warnings.

24 10. Plaintiff is informed and believes, and thereon alleges that DESTINATION HOTELS
25 AND RESORTS, INC.; INTERSTATE HOTELS, LLC; CROSSROADS
26 HOSPITALITY, LLC; PACIFICA HOST; LODGIAN MANAGEMENT; WOODFIN
27 SUITE HOTELS, LLC; OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN
28 SUITE CORP.; AND DOES 1 TO 100, as retailers of cigars and tobacco products, failed

1 to comply with the terms of the Previous Consent Judgments, and thereby violated Health
2 and Safety Code section 25249.5, *et seq.*, (1) by one or both (a) receiving containers or
3 display boxes of cigars or other tobacco products without a Proposition 65-Compliant
4 Warning and thereafter selling these containers and display boxes, and/or their contents,
5 without any Proposition 65-Compliant Warnings, and/or (b) by receiving cigars or other
6 tobacco products in boxes or display containers properly labeled with a Proposition 65-
7 Compliant Warning and thereafter removing, covering, or defacing the warning so that a
8 retail customer could not ordinarily or reasonably read the warning, or removing the
9 contents of the containers and display boxes and thereafter selling these contents without
10 any Proposition 65-Compliant Warning (such as in a humidor without any Proposition
11 65-Compliant Warning), and (2) by not displaying clear and reasonable Proposition 65-
12 Compliant Warnings at the counters at which the cigars are sold that a retail customer is
13 reasonably likely to see. Plaintiff is informed and believes, and thereon alleges, that the
14 conduct described above constitutes a violation of Health and Safety Code section
15 25249.5, *et seq.*, as it applies to retailers of cigars and tobacco products. All violations of
16 Health and Safety Code section 25249.5, *et seq.*, by defendants alleged herein shall refer
17 to the conduct, acts, and omissions described in this paragraph.

18 11. The route of such environmental, occupational, and consumer exposures is through
19 inhalation, ingestion, and dermal contact to chemicals known to the State of California to
20 cause cancer and reproductive toxicity.

21 12. Defendants DESTINATION HOTELS AND RESORTS, INC. AND DOES 1 TO 100
22 knowingly and intentionally exposed consumers and/or customers to tobacco smoke and
23 the constituent Proposition 65-listed chemicals known to the State of California to cause
24 cancer or reproductive toxicity at locations throughout California while failing to provide
25 Proposition 65-Compliant Warnings. Consumers and/or customers of defendants
26 DESTINATION HOTELS AND RESORTS, INC. AND DOES 1 TO 100 were exposed
27 to tobacco smoke and the constituent Proposition 65-listed chemicals set forth below in
28 the lobbies, corridors, and hallways of floors where guest rooms designated for smokers

1 are located, areas adjacent to pools and entrances, smoking rooms, and guest rooms
2 designated for smoking at locations throughout California, and thereby inhaled tobacco
3 smoke and the constituent Proposition 65-listed chemicals set forth below that are known
4 to the State of California to cause cancer and/or reproductive harm.

5 13. Defendants INTERSTATE HOTELS, LLC AND DOES 1 TO 100 knowingly and
6 intentionally exposed consumers and/or customers to tobacco smoke and the constituent
7 Proposition 65-listed chemicals known to the State of California to cause cancer or
8 reproductive toxicity at locations throughout California through the sale of cigars and
9 other tobacco products without Proposition 65-Compliant Warnings, as well as through
10 permitting the consumption of cigars and other tobacco products on its premises.
11 Consumers and/or customers at locations throughout California inhaled tobacco smoke
12 and the constituent Proposition 65-listed chemicals set forth below that are known to the
13 State of California to cause cancer and/or reproductive toxicity. Moreover, purchasers of
14 cigars sold by defendants INTERSTATE HOTELS, LLC AND DOES 1 TO 100 lit them
15 and smoked them in their homes, places of work, places of leisure, and in the lobbies,
16 corridors, and hallways of floors where guest rooms designated for smokers are located,
17 areas adjacent to pools and entrances, smoking rooms, and guest rooms designated for
18 smoking at premises throughout California owned and/or controlled by INTERSTATE
19 HOTELS, LLC AND DOES 1 TO 100, and in doing so, absorbed through the linings of
20 their mouths the chemicals listed below that are known to the State of California to cause
21 cancer and/or reproductive toxicity. Consumers and/or customers of defendants
22 INTERSTATE HOTELS, LLC AND DOES 1 TO 100 were exposed to tobacco smoke
23 and the constituent Proposition 65-listed chemicals set forth below in the lobbies,
24 corridors, and hallways of floors where guest rooms designated for smokers are located,
25 areas adjacent to pools and entrances, smoking rooms, and guest rooms designated for
26 smoking at locations throughout California, and thereby inhaled tobacco smoke and the
27 constituent Proposition 65-listed chemicals set forth below that are known to the State of
28 California to cause cancer and/or reproductive harm.

1 14. Defendants CROSSROADS HOSPITALITY, LLC AND DOES 1 TO 100 knowingly
2 and intentionally exposed consumers and/or customers to tobacco smoke and the
3 constituent Proposition 65-listed chemicals known to the State of California to cause
4 cancer or reproductive toxicity at locations throughout California through the sale of
5 cigars and other tobacco products without Proposition 65-Compliant Warnings, as well as
6 through permitting the consumption of cigars and other tobacco products on its premises.
7 Consumers and/or customers at locations throughout California inhaled tobacco smoke
8 and the constituent Proposition 65-listed chemicals set forth below that are known to the
9 State of California to cause cancer and/or reproductive toxicity. Moreover, purchasers of
10 cigars sold by defendants CROSSROADS HOSPITALITY, LLC AND DOES 1 TO 100
11 lit them and smoked them in their homes, places of work, places of leisure, and in the
12 lobbies, corridors, and hallways of floors where guest rooms designated for smokers are
13 located, areas adjacent to pools and entrances, smoking rooms, and guest rooms
14 designated for smoking at premises throughout California owned and/or controlled by
15 CROSSROADS HOSPITALITY, LLC AND DOES 1 TO 100, and in doing so, absorbed
16 through the linings of their mouths the chemicals listed below that are known to the State
17 of California to cause cancer and/or reproductive toxicity. Consumers and/or customers
18 of defendants CROSSROADS HOSPITALITY, LLC AND DOES 1 TO 100 were
19 exposed to tobacco smoke and the constituent Proposition 65-listed chemicals set forth
20 below in the lobbies, corridors, and hallways of floors where guest rooms designated for
21 smokers are located, areas adjacent to pools and entrances, smoking rooms, and guest
22 rooms designated for smoking at locations throughout California, and thereby inhaled
23 tobacco smoke and the constituent Proposition 65-listed chemicals set forth below that
24 are known to the State of California to cause cancer and/or reproductive harm.

25 15. Defendants PACIFICA HOST AND DOES 1 TO 100 knowingly and intentionally
26 exposed consumers and/or customers to tobacco smoke and the constituent Proposition
27 65-listed chemicals known to the State of California to cause cancer or reproductive
28 toxicity at locations throughout the State of California while failing to provide

1 Proposition 65-Compliant Warnings. Consumers and/or customers at locations
2 throughout the State of California inhaled tobacco smoke and the constituent Proposition
3 65-listed chemicals that are known to the State of California to cause cancer and/or
4 reproductive toxicity. Consumers and/or customers of defendants PACIFICA HOST
5 AND DOES 1 TO 100 were exposed to tobacco smoke and the constituent Proposition
6 65-listed chemicals set forth below in the lobbies, corridors, and hallways of floors where
7 guest rooms designated for smokers are located, areas adjacent to pools and entrances,
8 smoking rooms, and guest rooms designated for smoking at locations throughout
9 California, and thereby inhaled tobacco smoke and the constituent Proposition 65-listed
10 chemicals set forth below that are known to the State of California to cause cancer and/or
11 reproductive harm.

12 16. Defendants LODGIAN MANAGEMENT AND DOES 1 TO 100 knowingly and
13 intentionally exposed consumers and/or customers to tobacco smoke and the constituent
14 Proposition 65-listed chemicals known to the State of California to cause cancer or
15 reproductive toxicity at locations throughout the State of California while failing to
16 provide Proposition 65-Compliant Warnings. Consumers and/or customers at locations
17 throughout the State of California inhaled tobacco smoke and the constituent Proposition
18 65-listed chemicals that are known to the State of California to cause cancer and/or
19 reproductive toxicity. Consumers and/or customers of defendants LODGIAN
20 MANAGEMENT AND DOES 1 TO 100 were exposed to tobacco smoke and the
21 constituent Proposition 65-listed chemicals set forth below in the lobbies, corridors, and
22 hallways of floors where guest rooms designated for smokers are located, areas adjacent
23 to pools and entrances, smoking rooms, and guest rooms designated for smoking at
24 locations throughout California, and thereby inhaled tobacco smoke and the constituent
25 Proposition 65-listed chemicals set forth below that are known to the State of California
26 to cause cancer and/or reproductive harm.

27 17. Defendants WOODFIN SUITE HOTELS, LLC AND DOES 1 TO 100 knowingly and
28 intentionally exposed consumers and/or customers at locations throughout the State of

1 California to tobacco smoke and the constituent Proposition 65-listed chemicals while
2 failing to provide Proposition 65-Compliant Warnings. Consumers and/or customers at
3 locations throughout the State of California inhaled tobacco smoke and the constituent
4 Proposition 65-listed chemicals set forth below that are known to the State of California
5 to cause cancer and/or reproductive toxicity.

6 18. Defendants RUFFIAN SUITE CORP. AND DOES 1 TO 100 knowingly and
7 intentionally exposed consumers and/or customers at locations throughout the State of
8 California to tobacco smoke and the constituent Proposition 65-listed chemicals while
9 failing to provide Proposition 65-Compliant Warnings. Consumers and/or customers at
10 locations throughout the State of California inhaled tobacco smoke and the constituent
11 Proposition 65-listed chemicals set forth below that are known to the State of California
12 to cause cancer and/or reproductive toxicity.

13 19. At all times mentioned herein, employees of defendants DESTINATION HOTELS AND
14 RESORTS, INC.; INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY,
15 LLC; PACIFICA HOST; LODGIAN MANAGEMENT; WOODFIN SUITE HOTELS,
16 LLC; OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN SUITE CORP.;
17 AND DOES 1 TO 100, which include, but are not limited to, bartenders, cashiers,
18 waiters, waitresses, cooks, security personnel, maintenance workers, services personnel,
19 and entertainment providers, were exposed to tobacco smoke and the constituent
20 Proposition 65-listed chemicals set forth below in the lobbies, corridors, and hallways of
21 floors where guest rooms designated for smokers are located, areas adjacent to pools and
22 entrances, smoking rooms, and guest rooms designated for smoking at premises owned,
23 controlled, and/or operated by DESTINATION HOTELS AND RESORTS, INC.;
24 INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY, LLC; PACIFICA
25 HOST; LODGIAN MANAGEMENT; WOODFIN SUITE HOTELS, LLC;
26 OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN SUITE CORP.; AND
27 DOES 1 TO 100.

1 20. At all times relevant to this action, Plaintiff is informed and believes, and thereon alleges
2 that defendants DESTINATION HOTELS AND RESORTS, INC.; INTERSTATE
3 HOTELS, LLC; CROSSROADS HOSPITALITY, LLC; PACIFICA HOST; LODGIAN
4 MANAGEMENT; WOODFIN SUITE HOTELS, LLC; OUTRIGGER LODGING
5 SERVICES; TARSADIA; RUFFIAN SUITE CORP.; AND DOES 1 TO 100 knew that
6 their customers, employees, and members of the public were being exposed tobacco
7 smoke through inhalation and dermal contact. Therefore, DESTINATION HOTELS
8 AND RESORTS, INC.; INTERSTATE HOTELS, LLC; CROSSROADS
9 HOSPITALITY, LLC; PACIFICA HOST; LODGIAN MANAGEMENT; WOODFIN
10 SUITE HOTELS, LLC; OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN
11 SUITE CORP.; AND DOES 1 TO 100 knowingly and intentionally exposed their
12 customers, employees, and members of the public to the Proposition 65-listed chemicals
13 set forth below found in cigars and other tobacco products, and produced by consumption
14 thereof, and known to the State of California to cause cancer and/or reproductive toxicity.
15 Such exposure occurred in the lobbies, smoking rooms, guest rooms designated for
16 smoking, and in the hallways of the floors where the rooks are designated for smoking at
17 premises owned, controlled, and/or operated by DESTINATION HOTELS AND
18 RESORTS, INC.; INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY,
19 LLC; PACIFICA HOST; LODGIAN MANAGEMENT; WOODFIN SUITE HOTELS,
20 LLC; OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN SUITE CORP.;
21 AND DOES 1 TO 100.

22 21. At all times relevant to this action, Plaintiff is informed and believes, and thereon alleges
23 that defendants INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY, LLC;
24 AND DOES 1 TO 100 knew that the consumption and foreseeable use of cigars sold by
25 them exposed customers and/or consumers to tobacco smoke and the constituent
26 Proposition 65-listed chemicals known to the State of California to cause cancer and/or
27 reproductive toxicity and harm. At all times relevant to this action, defendants
28 INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY, LLC; AND DOES 1

1 TO 100 knew and intended that the normal and foreseeable use of their cigars would
 2 expose their customers and/or consumers to tobacco smoke and the constituent
 3 Proposition 65-listed chemicals through inhalation, ingestion, and dermal contact.

4 Therefore, INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY, LLC; AND
 5 DOES 1 TO 100 knowingly and intentionally exposed their customers and/or consumers
 6 to tobacco smoke and the following constituent Proposition 65-listed chemicals found in
 7 cigars and tobacco products known to the State of California to cause cancer and/or
 8 reproductive toxicity:

9 **CARCINOGENS**

10 Tobacco smoke	Acetaldehyde
11 Acetamide	Acrolein
12 Acrylonitrile	4-Aminobiphenyl
13 Aniline	o-Anisidine
14 Benz[a]anthracene	Benzene
15 Benzo[b]fluoranthene	Benzo[j]fluoranthene
16 Benzo[k]fluoranthene	Benzo[a]pyrene
17 1,3-Butadiene	Captan
18 Carbon disulfide	Carbon monoxide
19 Chrysene	DDT
20 Dibenz[a,h]acridine	Dibenz[a,j]acridine
21 Dibenz[a,h]anthracene	7H-Dibenzo[c,g]carbazole
22 Dibenzo[a,e]pyrene	Dibenzo[a,h]pyrene
23 Dibenzo[a,i]pyrene	Dibenzo[a,l]pyrene
24 1,1-Dimethylhydrazine	1-Naphthylamine
25 2-Naphthylamine	Nicotine
26 2-Nitropropane	N-Nitrosodi-n-butylamine
27 N-Nitrosodiethanolamine	N-Nitrosodiethylamine
28 N-Nitroso-n-methylethylamine	N'-Nitrosornicotine
N-Nitrosopiperidine	N-Nitrosopyrrolidine
Styrene	Toluene
2-Toluidine	Urethane
Vinyl chloride	Arsenic
Cadmium	Chromium
Lead	Nickel

26 **REPRODUCTIVE TOXINS**

27 Arsenic (inorganic oxides)	Cadmium
28 Carbon disulfide	Carbon monoxide

Lead	Nicotine
Toluene	Tobacco Smoke
Urethane	

22. The purchasers of the cigars were exposed to the above Proposition 65-listed chemicals without being given the warnings required by Health and Safety Code section 25249.6 and the Previous Consent Judgments discussed above, *i.e.*, clear and conspicuous language placed, such that an ordinary retail customer would reasonably notice it, on containers and display boxes of cigars and other tobacco products, and their contents if sold separately, that states that the product contains/produces chemicals known to the State of California to cause cancer, birth defects, and/or other reproductive harm.

23. The routes of exposure of the above Proposition 65-listed chemicals were and are by inhalation, ingestion, absorption, and dermal contact.

24. By engaging in the acts and omissions set forth above, DESTINATION HOTELS AND RESORTS, INC.; INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY, LLC; PACIFICA HOST; LODGIAN MANAGEMENT; WOODFIN SUITE HOTELS, LLC; OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN SUITE CORP.; AND DOES 1 TO 100 in the course of doing business, knowingly and intentionally exposed individuals to chemicals known to the State of California to cause cancer and/or reproductive toxicity without first giving clear and reasonable warning within the meaning of Health and Safety Code section 25249.6 and the Previous Consent Judgments, *i.e.*, clear and conspicuous language placed, such that an ordinary retail customer would reasonably notice it, on containers and display boxes of cigars or other tobacco products, and their contents if sold separately, that states that the product contains/produces chemicals known to the State of California to cause cancer, birth defects, and/or other reproductive harm.

25. Each defendant failed and refused to give prior clear and reasonable warnings that comply with the requirements of Health and Safety Code section 25219.5, *et seq.*, and the terms of the Previous Consent Judgments, to individuals exposed to reproductive toxins

1 and carcinogens through the normal and foreseeable use of its products. Plaintiff is
2 informed and believes, and thereon alleges, defendants failed to provide the warnings
3 required by Health and Safety Code section 25249.6 and the previous consent judgments
4 discussed above by (1) either one or both (a) removing cigars or other tobacco products
5 from containers or display boxes containing Proposition 65-Compliant Warnings and
6 selling these products outside of these containers or display boxes, including in humidors,
7 without any accompanying or clear and reasonable Proposition 65-Compliant Warnings,
8 and/or (b) receiving cigars or other tobacco products in containers or display boxes not
9 containing any Proposition 65-Compliant Warnings and thereafter selling these products
10 absent any Proposition 65-Compliant Warnings, and (2) not displaying any clear or
11 reasonable Proposition 65-Compliant Warnings at the counters at which these products
12 are sold that a retail customer would be reasonably likely to see.

13 26. Plaintiff mailed to DESTINATION HOTELS AND RESORTS, INC.; INTERSTATE
14 HOTELS, LLC; CROSSROADS HOSPITALITY, LLC; PACIFICA HOST; LODGIAN
15 MANAGEMENT; WOODFIN SUITE HOTELS, LLC; OUTRIGGER LODGING
16 SERVICES; TARSADIA; RUFFIAN SUITE CORP.; AND DOES 1 TO 100 60-day
17 notices for failure to properly warn the public about chemicals listed under Health and
18 Safety Code section 25249.6. Copies of the notices were mailed to the California
19 Attorney General and the County District Attorneys and City Attorneys for each city
20 containing a population of at least 750,000 people, for the locations throughout the State
21 of California within which the defendants have allegedly violated Health and Safety Code
22 section 25249.5, *et seq.*, and 22 California Code of Regulations sections 12000 through
23 14000.

24 27. Before mailing each 60-day notice to defendants DESTINATION HOTELS AND
25 RESORTS, INC.; INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY,
26 LLC; PACIFICA HOST; LODGIAN MANAGEMENT; WOODFIN SUITE HOTELS,
27 LLC; OUTRIGGER LODGING SERVICES; TARSADIA; RUFFIAN SUITE CORP.;
28 AND DOES 1 TO 100, Plaintiff conducted investigations as to each of these defendants.

1 As a result of these investigations, Plaintiff identified violations of Proposition 65,
2 including non-compliance with the Previous Consent Judgments, as to each of these
3 defendants.

4 28. No response was ever received from any of the prosecutors to whom Plaintiff sent the 60-
5 day notices. Plaintiff is informed and believes that none of the prosecutors to whom
6 Plaintiff sent 60-day notices is prosecuting an action against any defendant herein for the
7 violations set forth herein.

8 29. Individuals exposed to the chemicals suffered and continue to suffer irreparable harm due
9 to their being exposed to the above-listed chemicals without prior clear and reasonable
10 warning.

11 30. Plaintiff is informed, believes, and thereon alleges that each of defendants
12 DESTINATION HOTELS AND RESORTS, INC.; INTERSTATE HOTELS, LLC;
13 CROSSROADS HOSPITALITY, LLC; PACIFICA HOST; LODGIAN
14 MANAGEMENT; WOODFIN SUITE HOTELS, LLC; OUTRIGGER LODGING
15 SERVICES; TARSADIA; RUFFIAN SUITE CORP.; AND DOES 1 TO 100'S
16 violations of Proposition 65 arising from the its conduct surrounding cigars, including,
17 but not limited to, the sale thereof, without Proposition 65-Compliant Warnings have
18 been ongoing and continuous to the date of the signing of this complaint, so that a
19 separate and distinct violation of Proposition 65 occurred each and every time a person
20 was exposed to the Proposition 65-Listed chemicals above.

21 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
22 mentioned herein is ever continuing.

23 32. An action for injunctive relief and penalties for violations of Health and Safety Code
24 section 25249.5, *et seq.*, is specifically authorized by Health and Safety Code section
25 25249.7.

26 ///

27 ///

28 ///


PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests against each defendant as follows:

1. A permanent injunction pursuant to California Health and Safety Code section 25249.7(a), and the equitable powers of the Court;
2. Penalties pursuant to Health and Safety Code section 25249.7(b) in the amount of \$2,500.00 per day per violation;
3. Cost of suit;
4. Reasonable attorney's fees and costs; and
5. Any further relief that the Court may deem just and equitable.

Dated: December 18, 2008

YEROUSHALMI & ASSOCIATES

BY: 
Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

**SUMMONS ON FIRST AMENDED
(CITACION JUDICIAL) COMPLAINT**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

DESTINATION HOTELS AND RESORTS, INTERSTATE HOTELS, LLC; CROSSROADS HOSPITALITY, LLC; PACIFICA HOST; (Additional Parties Attachment form is attached)

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CONSUMER ADVOCACY GROUP, INC., in the public interest

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

LOS ANGELES SUPERIOR COURT-CENTRAL CIVIL WEST
600 Commonwealth Avenue
Los Angeles, CA 90005

CASE NUMBER:
(Número del Caso):

JCCP 4182

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Reuben Yeroushalmi (SBN 193981), YEROUSHALMI & ASSOCIATES
3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010; Telephone No.: (213) 382-3183

DATE:
(Fecha)

Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

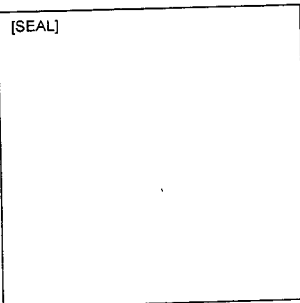
NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

- 4. by personal delivery on (date):



SHORT TITLE: SECOND HAND SMOKE CASES	CASE NUMBER: JCCP 4182
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

LODGIAN MANAGEMENT; WOODFIN SUITE HOTELS, LLC; OUTRIGGER LODGING SERVICES;
 TARSADIA HOTELS; RUFFIAN SUITE CORP.; and DOES 1 to 100,

Page _____ of _____

Page 1 of 1

ADDITIONAL PARTIES ATTACHMENT

Attachment to Summons

ON FIRST AMENDED COMPLAINT