

1 GRAHAM & MARTIN, LLP
2 Anthony G. Graham (State Bar No.148682)
3 Michael J. Martin (State Bar No.171757)
4 950 South Coast Drive, Suite 220
5 Costa Mesa, California 92626
6 (714) 850-9390

7 Attorneys For Plaintiff
8 CONSUMER DEFENSE
9 GROUP ACTION

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

APR 02 2007

John A. Clarke, Executive Officer/Clerk

By _____

51
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF ORANGE

10 CONSUMER DEFENSE GROUP ACTION,)
11 Plaintiff,)
12 vs.)
13 LEGACY PARTNERS, and DOES 1-20,)
14 Defendants.)

CASE NO. NC039634

**VERIFIED COMPLAINT FOR
VIOLATION OF CALIFORNIA HEALTH
& SAFETY CODE**

16 As and for its cause of action against LEGACY PARTNERS and DOES 1 - 20, plaintiff
17 CONSUMER DEFENSE GROUP ACTION alleges as follows:

18 **ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION**

19 1. Plaintiff CONSUMER DEFENSE GROUP ACTION is and has been at all
20 relevant times a corporation duly organized and existing under and by virtue of the laws of the
21 State of California, and brings this action in the public interest on behalf of the People of the
22 State of California as defined under Health & Safety Code § 25249.7 (d).

23 2. Defendant LEGACY PARTNERS is and at all times mentioned herein has been
24 qualified to do business in the State of California.

25 3. Plaintiffs are ignorant of the true names and capacities of defendants sued as
26 DOES 1- 20, inclusive, and therefore sue these defendants by such fictitious names. The
27

1 fictitious defendants named in this Complaint are sued pursuant to the provisions of Code of
2 Civil Procedure § 474. Plaintiff is informed and believe, and upon that ground, alleges that
3 each fictitious defendant is in some way responsible for, participated in, or contributed to the
4 matters and things of which Plaintiff complains herein, and in some fashion, has legal
5 responsibility therefor. When the exact nature and identity of such fictitious defendants'
6 responsibility for, participation in, and contribution to the matters and things alleged herein are
7 ascertained by Plaintiff, Plaintiff will seek to amend this Complaint and all proceedings herein
8 to set forth the same.

9 4. At all times mentioned herein each of the Defendants was a person within the
10 meaning of Business & Professions Code § 17201 and a person doing business within the
11 meaning of Health & Safety Code § 25249.11 (a). Plaintiff is informed and believe and thereon
12 alleges that at all times mentioned herein, each of the Defendants has had 10 or more
13 employees.

14 5. The Court has jurisdiction over this action pursuant to California Constitution
15 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
16 those given by statute to other trial courts. The statutes under which this action is brought do
17 not specify any other basis of jurisdiction.

18 **CAUSE OF ACTION AGAINST LEGACY PARTNERS AND DOES 1- 20**

19 **(Violation of California Health & Safety Code)**

20 6. Plaintiff CONSUMER DEFENSE GROUP ACTION repeats and incorporate by
21 reference paragraphs 1 through 5 of this Complaint as though fully set forth herein.

22 7. Health & Safety Code § 25249.6 requires that persons who in the course of
23 doing business knowingly and intentionally expose any individual to a chemical known to the
24 State of California to cause cancer, birth defects or reproductive toxicity must provide a clear
25 and reasonable warning prior to such exposure..

26 8. LEGACY PARTNERS and DOES 1- 20 knowingly and intentionally exposed
27 tenants, visitors, guests, invitees, contractors, employees and/or the general public to chemicals
28 known to the State of California to cause cancer, birth defects and reproductive toxicity, as set

1 forth in Health & Safety Code §§ 25249.5, et seq. and 22 California Code of Regulations §§
2 12000 through 14000 without giving clear and reasonable warnings of that fact to the exposed
3 persons prior to exposure. Employees include but are not limited to property managers,
4 administrative personnel, security personnel, construction personnel, maintenance workers,
5 service personnel, housekeeping personnel, concierge, and support staff (hereinafter
6 "Employees").

7 9. LEGACY PARTNERS and DOES 1- 20 knowingly and intentionally exposed
8 tenants, visitors, guests, invitees, contractors, employees and/or the general public to chemicals
9 known to the State of California to cause cancer, birth defects and reproductive toxicity, as set
10 forth in Health & Safety Code § 25249.5, *et seq.* and 22 California Code of Regulations §§
11 12000 through 14000 at the properties it owns throughout California, including the City and
12 County of Los Angeles. Tenants, visitors, guests, invitees, contractors, employees and/or the
13 general public were exposed in the apartments, public rooms, exercise rooms, swimming pools,
14 garden areas, lobbies, corridors, parking garages and other parking facilities, maintenance
15 shops, administrative offices, salons, entryways and hallways of the apartments at the properties
16 it owns throughout California.

17 10. At all times relevant to this action LEGACY PARTNERS and DOES 1- 20
18 knew that their tenants, visitors, guests, invitees, contractors, Employees and/or the general
19 public were being exposed, through ingestion, inhalation and dermal contact, to chemicals
20 known to the State of California to cause cancer, birth defects and reproductive toxicity, as set
21 forth in Health & Safety Code § 25249.5, *et seq.* and 22 California Code of Regulations §§
22 12000 through 14000 "hereinafter referred to as "Designated Chemicals"). Therefore,
23 LEGACY PARTNERS and DOES 1- 20 knowingly and intentionally exposed its tenants,
24 visitors, guests, invitees, contractors, employees and/or the general public to Designated
25 Chemicals.

26 11. LEGACY PARTNERS and DOES 1- 20 knowingly and intentionally exposed
27 their tenants, visitors, guests, invitees, contractors, employees and/or the general public at the
28 properties it owns throughout California, including the City and County of Los Angeles to said

chemicals without providing prior clear and reasonable warnings to tenants, visitors, guests,
1 invitees, contractors, employees and/or the general public that they could be exposed to
2 chemicals known to the State of California to cause cancer, birth defects and reproductive
3 toxicity, as set forth in Health & Safety Code §§ 25249.5, et seq. and 22 California Code of
4 Regulations §§ 12000 through 14000.

5 12. The route of exposure for the said chemicals has been inhalation, ingestion and
6 dermal contact, that is via the breathing of said chemicals, eating said chemicals, and/or by
7 contact with the skin.

8 13. More than sixty-five (65) days prior to filing this Complaint, Plaintiff sent a
9 series of specific Sixty (60) Day Notices of Intent to Sue for various violations of Proposition
10 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety
11 Code § 25249.5) by knowingly and intentionally exposing tenants, visitors, guests, invitees,
12 contractors, employees and/or the general public to Designated Chemicals as noted in
13 paragraphs 10 - 11 and designated by the State of California to cause cancer, birth defects and
14 reproductive toxicity without first giving clear and reasonable warning of that fact to the
15 exposed persons as required by Health & Safety Code § 24249.6.

16 14. After the initial round of Notices substantive and substantial discussions took
17 place between counsel for the parties. During those discussion LEGACY PARTNERS
18 admitted knowingly and intentionally exposing tenants, visitors, guests, invitees, contractors,
19 employees and/or the general public to specific Designated Chemicals by reason of LEGACY
20 PARTNERS engaging in certain specific conduct in relation to their ownership and control of
21 the Properties which inevitably resulted in specific exposures of Designated Chemicals to their
22 tenants, visitors, guests, invitees, contractors, employees and/or the general public. LEGACY
23 PARTNERS also admitted that it had not provided a clear and reasonable warning as required
24 by Health & Safety Code § 24249.6 *et seq.*

25 15. More than sixty-five (65) days prior to filing this Complaint, Plaintiff mailed
26 LEGACY PARTNERS an Amended Sixty (60) Day Notice of Intent to Sue for violations of
27 Proposition 65 (hereinafter the various notices are referred to collectively herein as "the
28

1 Notices"), specifically based upon the admissions made by LEGACY PARTNERS. The
2 Amended Notice specifically identified the chemicals to which LEGACY PARTNERS had
3 specifically admitted that it had exposed tenants, visitors, guests, invitees, contractors,
4 employees and/or the general public. The Amended Notice identified the specific locations
5 where the exposures had occurred, the time period wherein such exposure had occurred, and
6 also identified the route of exposure for the chemicals as inhalation, ingestion and dermal
7 contact. Included with the Notices was a copy of "The Safe Drinking Water and Toxic
8 Enforcement Act of 1986 (Proposition 65): A Summary."

9 16. Copies of the Notices referred to in paragraphs 13 - 15 were mailed to the
10 California Attorney General, the relevant County District Attorneys and City Attorneys for each
11 city containing a population of at least 750,000 people (hereinafter referred to collectively as
12 the "Prosecutors") for the locations where LEGACY PARTNERS had violated Health & Safety
13 Code §§ 25249.5, *et seq.* and 22 California Code of regulations §§ 12000 through 14000.

14 17. None of the Prosecutors is prosecuting an action against LEGACY PARTNERS
15 herein for the violations set forth above. None of the Prosecutors has contacted Plaintiff
16 concerning the Notices or the violations asserted against LEGACY PARTNERS.

17 18. Individuals exposed to the listed chemicals suffered and continue to suffer
18 irreparable harm due to their exposure to said chemicals without prior clear and reasonable
19 warning.

20 19. This action for injunctive relief and penalties for violation of Health & Safety
21 Code §§ 25249.5, *et seq.* is specifically authorized by Health & Safety Code § 25249.7.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff requests against Defendants and DOES 1 - 20:

24 **ON THE FIRST CAUSE OF ACTION**

- 25 1. A permanent injunction pursuant to California Health & Safety Code §
26 25249.7(a), and the equitable powers of the court;
- 27 2. Penalties pursuant to California Health & Safety Code § 25249.7(b) in the
28 amount of \$2,500.00 per day per violation at each of the properties Defendant

VERIFICATION

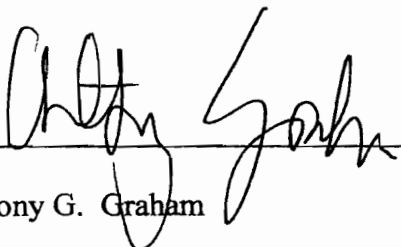
Consumer Defense Group Action v. Legacy Partners and DOES 1 through 20.

Superior Court for the County of Los Angeles, State of California.

I, the undersigned, certify and declare that I have read the foregoing Complaint in the above referenced matter and know its contents. I am the attorney for Consumer Defense Group Action, a party to this action. Plaintiff's President is absent from the county where I have my office and thus unable to verify the document described above. For that reason, I am making this verification for and on behalf of him. I am informed and believe and on that ground allege that the matters stated in said document are true.

Executed on March 24, 2007, at Costa Mesa, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Anthony G. Graham