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7
8 Attorneys For Plaintiff,
9 SHAWNA GREEN

FILED

K. TORRE CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By K. Mitchell Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

SHAWNA GREEN,
Plaintiff,
vs.
NETWORK MANAGEMENT GROUP,
INC. AND DOES 1-100, inclusive.
Defendants.

Case No. **C06 02052**
**COMPLAINT FOR VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE
§ 25249.6 AND BUSINESS &
PROFESSIONS CODE § 17200**

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 33

Plaintiff SHAWNA GREEN alleges:

ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION

- 1) Plaintiff SHAWNA GREEN is a resident of the state of California and brings this action in the public interest as defined under Health & Safety Code § 25249.7 (d).
- 2) Defendants NETWORK MANAGEMENT GROUP, INC. AND DOES 1-100 are and at all times mentioned herein have been qualified to do business in the State of California. Network Management Group, Inc.'s employees work in the Casino San Pablo, located in Contra Costa County, California, of which plaintiff was an employee. The Casino is owned by the Lytton Band of Pomo Indians, which is immune to civil liability under Proposition 65. Network Management Group, Inc. enjoys no such liability.
- 3) Plaintiff is ignorant of the true names and capacities of defendants sued as DOES 1- 100, inclusive, and therefore sues these defendants by such fictitious names.

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1 The fictitious defendants named in this Complaint are sued pursuant to the provisions of
2 C.C.P. §474. Plaintiff is informed and believe, and upon that ground, allege that each
3 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 therefore. When the exact nature and identity of such fictitious defendants'
6 responsibility for, participation in, and contribution to the matters and things alleged
7 herein are ascertained by Plaintiffs, Plaintiff will seek to amend this Complaint and all
8 proceedings herein to set forth the same.

9 4) At all times mentioned each of the defendants herein was a person doing
10 business within the meaning of Health & Safety Code § 25249.11 (a). Plaintiffs are
11 informed and believe and thereon allege that at all times mentioned herein, each
12 defendant has had 10 or more employees.

13 5) Defendant gained a competitive advantage by their unfair and deceptive
14 business practices within the meaning of California Business and Professions Code
15 section 17200, which allowed them to profit more than if they had complied with the
16 necessary warnings.

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

21 **FIRST CAUSE OF ACTION AGAINST ALL NAMED DEFENDANTS AND DOES 1-100**
22 **(Violation of California Health & Safety Code Section 25249.6)**

23 7) Plaintiff SHAWNA GREEN repeats and incorporate by reference
24 paragraphs 1 through 5 of this Complaint as though fully set forth herein. MS. GREEN
25 was employed as a Gaming Associate by Network Management Group, Inc. from
26 approximately September 2003 to May 2005. Her place of employment was at Casino
27 San Pablo where she worked as a card dealer. Tobacco smoking was and is permitted
28 inside the Casino, and the interior environment was and is very smoky.

1 8) Plaintiff is informed and believes and thereon allege that at all relevant
2 times alleged herein, defendants NETWORK MANAGEMENT GROUP, INC. AND DOES
3 1-100 knowingly and intentionally exposed customers, visitors, employees and/or the
4 general public to tobacco smoke- a chemical known to the State of California to cause
5 cancer and reproductive toxicity, as set forth in Health & Safety Code §§ 25249.5, *et seq.*
6 and 22 California Code of Regulations §§ 12000 through 14000 without first giving clear
7 and reasonable warnings of that fact to the exposed persons prior to exposure.
8 Employees include but are not limited to gaming associates, card dealers, drink servers,
9 administrative personnel, tellers, security personnel, maintenance workers, and service
10 personnel.

11 9) Defendant NETWORK MANAGEMENT GROUP, INC. knowingly and
12 intentionally exposed its employees to tobacco smoke and other chemicals known to the
13 State of California to cause cancer and reproductive toxicity, as set forth in Health &
14 Safety Code Sections 25249.5, *et seq.* and 22 California Code of Regulations Sections
15 12000 through 14000 at the Casino San Pablo.

16 10) At all times relevant to this action Defendants knew employees were being
17 exposed, through inhalation, to tobacco smoke and other chemicals known to the State
18 of California to cause cancer and reproductive toxicity, as set forth in Health & Safety
19 Code §§ 25249.5, *et seq.* and 22 California Code of Regulations §§ 12000 through
20 14000.

21 11) At all times relevant to this action Defendants and each of them knowingly
22 and intentionally exposed its employees to said chemicals without providing the warnings
23 required by Health & Safety Code Section 25249.6.

24 12) The route of exposure for the said chemicals has been inhalation, that is
25 via breathing, and contact with the eyes, skin, and clothing.

26 13) Such exposure took place in all areas of the workplace operated in which
27 Defendants operated and controlled workers at the Casino San Pablo.

28 14) Defendants failed and refused to give prior clear and reasonable warnings

1 to customers, visitors and/or employees that they could be exposed to tobacco smoke
2 known to the State of California to cause cancer and reproductive toxicity, as set forth in
3 Health & Safety Code Sections 25249.5, *et seq.* and 22 California Code of Regulations
4 Sections 12000 through 14000, at the Casino San Pablo.

5 15) Therefore, Defendants knowingly and intentionally exposed customers,
6 visitors and/or employees to chemicals known to the State of California to cause cancer
7 and/or reproductive toxicity, as set forth in Health & Safety Code Sections 25249.5, *et*
8 *seq.* and 22 California Code of Regulations Sections 12000 through 14000 at the Casino
9 San Pablo, without providing a clear and reasonable warning within the meaning of
10 Health & Safety Code Section 25249.6.

11 16) More than sixty-five days prior to filing this action Plaintiff mailed to the
12 President and/or Chief Executive Officer for each defendant a Sixty (60) Day Notice of
13 Intent to Sue (hereinafter, "the Notice") for violations of Proposition 65, the Safe Drinking
14 Water and Toxic Enforcement Act (commencing with Health & Safety Code Section
15 25249.5) by knowingly and intentionally exposing its customers, employees and the
16 public to chemicals designated by the State of California to cause cancer and
17 reproductive toxicity without first giving clear and reasonable warning of that fact to the
18 exposed persons as required by Health & Safety Code Section 24249.6. A copy of the
19 notice is attached hereto as Exhibit A and incorporated herein by this reference.

20 17) The Notice specifically identified the chemicals to which each Defendant
21 had exposed its customers, employees and the public.

22 18) The Notice identified the locations where the exposures had occurred, the
23 time period wherein such exposure had occurred, and also identified the route of
24 exposure for the chemicals as inhalation. Included with the Notices was a copy of "The
25 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

26 19) The Notice fully complied with the requirements of the Safe Drinking Water
27 and Toxic Enforcement Act of 1986.

28 20) Copies of the Notice referred to in paragraph 18 were mailed to the

1 California Attorney General, the County District Attorneys and City Attorneys for each city
2 containing a population of at least 750,000 people (hereinafter referred to collectively as
3 "the Prosecutors") for the locations where each defendant had violated Health & Safety
4 Code Sections 25249.5, *et seq.* and 22 California Code of regulations Sections 12000
5 through 14000.

6 21) No response was ever received from any of the Prosecutors. None of the
7 Prosecutors is prosecuting an action against any defendant herein for the violations set
8 forth above.

9 22) This action for injunctive relief and penalties for violation of Health & Safety
10 Code Sections 25249.5, *et seq.* is specifically authorized by Health & Safety Code
11 Section 25249.7.

12 **SECOND CAUSE OF ACTION AGAINST ALL NAMED DEFENDANTS**
13 **AND DOES 1-100**

14 **(Violations of Business & Professions Code Sections 17200 *et seq.***
15 **by Plaintiff Shawna Green on Behalf of the People of the State of**
16 **California) (Against All Defendants)**

17 23) Plaintiff Shawna Green, on behalf of the People of the State of California,
18 hereby incorporate by reference the allegations set forth in all of the
19 foregoing paragraphs as though fully set forth hereinafter.

20 24) The wrongful conduct, false representations, concealments, and
21 nondisclosures of Defendants, as detailed above, constitute unlawful, unfair, and/or
22 deceptive business practices within the meaning of California Business and Professions
23 Code section 17200.

24 25) Pursuant to California Business and Professions Code section 17203,
25 Plaintiff Shawna Green, on behalf of the People of the State of California, seeks an order
26 of this Court enjoining Defendants, and each of them, from continuing their
27 wrongful practices. The People of the State of California will be irreparably harmed if
28 such an order is not granted.

EXHIBIT A

committee members are appointed by the Governor and are designated as the "State's Qualified Experts" for evaluating chemicals under Proposition 65. When determining whether a chemical should be placed on the list, the committees base their decisions on the most current scientific information available. OEHHA staff scientists compile all relevant scientific evidence on various chemicals for the committees to review. The committees also consider comments from the public before making their decisions.

A second way for a chemical to be listed is if an organization designated as an "authoritative body" by the CIC or DART Identification Committee has identified it as causing cancer or birth defects or other reproductive harm. The following organizations have been designated as authoritative bodies: the U.S. Environmental Protection Agency, U.S. Food and Drug Administration (U.S. FDA), National Institute for Occupational Safety and Health, National Toxicology Program, and International Agency for Research on Cancer.

A third way for a chemical to be listed is if an agency of the state or federal government requires that it be labeled or identified as causing cancer or birth defects or other reproductive harm. Most chemicals listed in this manner are prescription drugs that are required by the U.S. FDA to contain warnings relating to cancer or birth defects or other reproductive harm.

In addition to these three listing procedures, Proposition 65 also requires the listing of chemicals meeting certain scientific criteria and identified in the California Labor Code as causing cancer or birth defects or other reproductive harm. This method was used to establish the initial chemical list following voter approval of Proposition 65 in 1986.

What requirements does Proposition 65 place on companies doing business in California?

Businesses are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means, such as by labeling a consumer product, posting signs at the workplace, distributing notices at a rental housing complex, or publishing notices in a newspaper. Once a chemical is listed, businesses have 12 months to comply with warning requirements.

Proposition 65 also prohibits companies that do business within California from knowingly discharging listed chemicals into sources of drinking water. Once a chemical is listed, businesses have 20 months to comply with the discharge prohibition.

Businesses with less than 10 employees and government agencies are exempt from Proposition 65's warning requirements and prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm. Health risks are explained in more detail below.

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December 16, 2005

Bill Lockyer, Attorney General
Edward Weil, Supervising Deputy Attorney General
Office of the Attorney General, Department of Justice
State of California
1515 Clay Street, Suite 2000
Oakland, CA 94612

And Agencies Listed in Attached Service List

Re: Notice of Violation of Proposition 65 By Network Management, Inc.

Gentlepeople:

I have been retained by the Shawna Green, an individual concerned about tobacco smoke exposure to workers employed by Network Management Group, Inc., at the Casino San Pablo in San Pablo, California, to initiate an action against Network Management Group, Inc., for violations of Proposition 65. This letter will serve as formal notice that Network Management Group, Inc. ("Network Management"), a California corporation doing business in California, with a principal place of business of 901 Corporate Center Drive, Ste. 524, Monterey Park, CA 91754, has violated the warning requirements of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (Health & Safety Code Section 25249.5 and following).

Network Management has exposed numerous individuals within the State of California to tobacco smoke, a chemical added to the Proposition 65 list as a carcinogen and cause of developmental harm on April 1, 1998. The time period of the violations that are the subject of this notice commenced more than one year after the listed dates above. The general geographic location of the unlawful exposure has been at Casino San Pablo, San Pablo, California, at which Network Management employees work. The means of exposure and/or threatened exposure has been by inhalation.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Network Management is in violation of Proposition 65 because it has failed to and continues to fail to provide a warning to persons in its

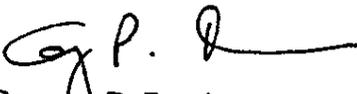
Bill Lockyer, Attorney General
Edward Weil, Supervising Deputy Attorney General
December 16, 2005
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employ who are exposed to hazardous levels of tobacco smoke in the workplace. (22 C.C.R. Section 12601.) In the course of doing business in California, the company knowingly and intentionally has exposed and continues to expose people to these chemicals, without first providing clear and reasonable warning. (Health and Safety Code Section 25249.6.) Based on the exposures involved, we believe the method of warning should have been a "warning that appears on a sign in the workplace posted in a conspicuous place and under conditions that make it likely to be read and understood by employees and other individuals prior to the exposure for which the warning is given." (22 C.C.R. Section 12601(c)(1)(B).)

Proposition 65 requires that notice and intent to sue be given to a violator 60 days before the suit is filed. With this letter, Shawna Green gives notice of the alleged violations to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Ms. Green from information now available to us. Investigation may lead to information concerning further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, attached hereto as Exhibit A, has been provided to the noticed party.

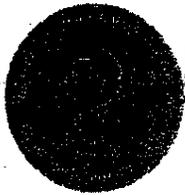
Do not hesitate to contact me with any concerns or questions.

Sincerely,


Gregory P. Brock

GPB:
Enclosures

cc: Shawna Green



Proposition 65 in Plain Language

Office of Environmental Health Hazard Assessment
California Environmental Protection Agency

What is Proposition 65?

In 1986, California voters approved an initiative to address their growing concerns about exposure to toxic chemicals. That initiative became the Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its original name of Proposition 65.

Proposition 65 requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, has grown to include approximately 750 chemicals since it was first published in 1987.

Proposition 65 requires businesses to notify Californians about significant amounts of chemicals in the products they purchase, in their homes or workplaces, or that are released into the environment. By providing this information, Proposition 65 enables Californians to make informed decisions about protecting themselves from exposure to these chemicals. Proposition 65 also prohibits California businesses from knowingly discharging significant amounts of listed chemicals into sources of drinking water.

The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program. OEHHA, which is part of the California Environmental Protection Agency (Cal/EPA), also evaluates all currently available scientific information on substances considered for placement on the Proposition 65 list.

What types of chemicals are on the Proposition 65 list?

The list contains a wide range of naturally occurring and synthetic chemicals that are known to cause cancer or birth defects or other reproductive harm. These chemicals include additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents. Listed chemicals may also be used in manufacturing and construction, or they may be byproducts of chemical processes, such as motor vehicle exhaust.

How is a chemical added to the list?

There are three principal ways for a chemical to be added to the Proposition 65 list. A chemical can be listed if either of two independent committees of scientists and health professionals finds that the chemical has been clearly shown to cause cancer or birth defects or other reproductive harm. These two committees—the Carcinogen Identification Committee (CIC) and the Developmental and Reproductive Toxicant (DART) Identification Committee—are part of OEHHA's Science Advisory Board. The

EXHIBIT

A

What does a warning mean?

If a warning is placed on a product label or posted or distributed at the workplace, a business, or in rental housing, the business issuing the warning is aware or believes that one or more listed chemicals is present. By law, a warning must be given for listed chemicals unless exposure is low enough to pose no significant risk of cancer or is significantly below levels observed to cause birth defects or other reproductive harm.

For a chemical that causes cancer, the "no significant risk level" is defined as the level of exposure that would result in not more than one excess case of cancer in 100,000 individuals exposed to the chemical over a 70-year lifetime. In other words, a person exposed to the chemical at the "no significant risk level" for 70 years would not have more than a "one in 100,000" chance of developing cancer as a result of that exposure.

For chemicals that are listed as causing birth defects or reproductive harm, the "no observable effect level" is determined by identifying the level of exposure that has been shown to not pose any harm to humans or laboratory animals. Proposition 65 then requires this "no observable effect level" to be divided by 1,000 in order to provide an ample margin of safety. Businesses subject to Proposition 65 are required to provide a warning if they cause exposures to chemicals listed as causing birth defects or reproductive harm that exceed $1/1000^{\text{th}}$ of the "no observable effect level."

To further assist businesses, OEHHA develops numerical guidance levels, known as "safe harbor numbers" (described below) for determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited. However, a business may choose to provide a warning simply based on its knowledge, or assumption, about the presence of a listed chemical without attempting to evaluate the levels of exposure. Because businesses do not file reports with OEHHA regarding what warnings they have issued and why, OEHHA is not able to provide further information about any particular warning. The business issuing the warning should be contacted for specific information, such as what chemicals are present, and at what levels, as well as how exposure to them may occur.

What are safe harbor numbers?

As stated above, to guide businesses in determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited, OEHHA has developed safe harbor numbers. A business has "safe harbor" from Proposition 65 warning requirements or discharge prohibitions if exposure to a chemical occurs at or below these levels. These safe harbor numbers consist of no significant risk levels for chemicals listed as causing cancer and maximum allowable dose levels for chemicals listed as causing birth defects or other reproductive harm. OEHHA has established safe harbor numbers for nearly 250 chemicals to date and continues to develop safe harbor numbers for listed chemicals.

Who enforces Proposition 65?

The California Attorney General's Office enforces Proposition 65. Any district attorney or city attorney (for cities whose population exceeds 750,000) may also enforce

Proposition 65. In addition, any individual acting in the public interest may enforce Proposition 65 by filing a lawsuit against a business alleged to be in violation of this law. Lawsuits have been filed by the Attorney General's Office, district attorneys, consumer advocacy groups, and private citizens and law firms. Penalties for violating Proposition 65 by failing to provide notices can be as high as \$2,500 per violation per day.

How is Proposition 65 meeting its goal of reducing exposure to hazardous chemicals in California?

Since it was passed in 1986, Proposition 65 has provided Californians with information they can use to reduce their exposures to listed chemicals that may not have been adequately controlled under other State or federal laws. This law has also increased public awareness about the adverse effects of exposures to listed chemicals. For example, Proposition 65 has resulted in greater awareness of the dangers of alcoholic beverage consumption during pregnancy. Alcohol consumption warnings are perhaps the most visible health warnings issued as a result of Proposition 65.

Proposition 65's warning requirement has provided an incentive for manufacturers to remove listed chemicals from their products. For example, trichloroethylene, which causes cancer, is no longer used in most correction fluids; reformulated paint strippers do not contain the carcinogen methylene chloride; and toluene, which causes birth defects or other reproductive harm, has been removed from many nail care products. In addition, a Proposition 65 enforcement action prompted manufacturers to decrease the lead content in ceramic tableware and wineries to eliminate the use of lead-containing foil caps on wine bottles.

Proposition 65 has also succeeded in spurring significant reductions in California of air emissions of listed chemicals, such as ethylene oxide, hexavalent chromium, and chloroform.

Although Proposition 65 has benefited Californians, it has come at a cost for companies doing business in the state. They have incurred expenses to test products, develop alternatives to listed chemicals, reduce discharges, provide warnings, and otherwise comply with this law. Recognizing that compliance with Proposition 65 comes at a price, OEHHA is working to make the law's regulatory requirements as clear as possible and ensure that chemicals are listed in accordance with rigorous science in an open public process.

Where can I get more information on Proposition 65?

For general information on the Proposition 65 list of chemicals, you may contact OEHHA's Proposition 65 program at (916) 445-6900, or visit <http://www.oehha.ca.gov/prop65.html>. For enforcement information, contact the California Attorney General's Office at (510) 622-2160, or visit <http://caag.state.ca.us/prop65/index.htm>.

Updated February 2003