

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
PROPERTY MANAGEMENT ASSOCIATES, PROPERTY
MANAGEMENT ASSOCIATES, INC., and DOBS 1-20

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
ROZITA HAIMPOUR, a private citizen acting in the public interest

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

**CONFORMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

OCT 14 2008

John A. Clarke, Executive Officer/Clerk
M. Garcia
BY MARY GARCIA, Deputy

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):
Superior Court of California for the County of Los Angeles
Stanley Mosk Courthouse
11 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): **BC399892**

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):
Daniel D. Cho, Yeroushalmi & Associates, 3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010, 213-382-3183

DATE: **OCT 14 2008**
(Fecha) JOHN A. CLARKE, CLERK M. GARCIA Deputy (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)).

SEAU

- NOTICE TO THE PERSON SERVED: You are served**
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - 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):
 - by personal delivery on (date):

THE PARTIES

1. Plaintiff, Rozita Hainmpour ("Plaintiff"), is private citizen of the State of California. Plaintiff brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d) for penalties and injunctive relief, as specifically authorized by Health and Safety Code section 25249.7, for environmental and occupational exposure to Tobacco Smoke and its constituent chemicals and byproducts, designated by the State of California to cause cancer or reproductive toxicity, sustained by persons, including, but not limited to, tenants, visitors, guests, invitees, contractors, and employees at residential properties owned, managed, and/or operated by defendants Property Management Associates, Property Management Associates, Inc., and Does 1-20 without the defendants first giving clear and reasonable warnings of such exposure to the exposed persons.
2. Defendant Property Management Associates is a California corporation.
3. Defendant Property Management Associates, Inc. is a California corporation.
4. Plaintiff is ignorant of the true names and capacities of defendants Does 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
5. At all times mentioned herein, "Defendants" include Property Management Associates, Property Management Associates, Inc., and Does 1-20.

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
6. Plaintiff is informed, believes, and thereon alleges that Defendants have at all times mentioned herein conducted business within the State of California as owners, managers, and/or operators of residential properties described below, and on whose premises persons, including, but not limited to, tenants, visitors, guests, invitees, contractors, and employees of Defendants, were knowingly and intentionally exposed to Tobacco Smoke and its constituent chemicals and byproducts designated by the State of California to cause cancer or reproductive toxicity without Defendants first giving clear and reasonable warning of such to the exposed persons.
7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the Defendants was a person doing business within the meaning of Health and Safety Code section 25249.11, subdivision (b), and that each of the Defendants had ten or more employees.

JURISDICTION

8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts.

BACKGROUND AND PRELIMINARY FACTS

9. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5 et seq. ("Proposition 65"), helps to protect California's drinking water sources from contamination, to allow consumers to make informed choices about the products they

buy, and to enable persons to protect themselves from toxic chemicals in their environment and their occupation as they see fit.

10. Proposition 65 requires the Governor of California to publish a list of chemicals known to the state to cause cancer, birth defects, or other reproductive harm. See Health & Safety Code, § 25249.8. The list, which the Governor updates at least once a year, contains over 550 chemicals. Proposition 65 imposes warning requirements and other controls that apply to Proposition 65-listed chemicals.
11. All businesses with ten or more employees that operate or sell products in California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited from knowingly discharging Proposition 65 listed chemicals into sources of drinking water (Health & Safety Code, § 25249.5), and (2) required to provide "clear and reasonable" warnings before exposing a person, knowingly and intentionally, to a Proposition 65 listed chemical (Health & Safety Code, § 25249.6).
12. Tobacco Smoke and its byproducts contain chemicals that are harmful when inhaled and under California Code of Regulations Title 22 section 12306 are known to the State of California to cause cancer and/or reproductive toxicity, including Carcinogens:

| | |
|--------------------------------|---------------------------------------|
| (4-Aminodiphenyl) | Arsenic (inorganic arsenic compounds) |
| 1, 1 -Dimethylhydrazine (UDMH) | Benz[a]anthracene |
| 1,3-Butadiene | Benzene |
| 1-Naphthylamine | Benzo[a]pyrene |
| 2-Naphthylamine | Benzo[b]fluoranthene |
| 2-Nitropropane | Benzo[j]fluoranthene |
| 4-Aminobiphenyl | Benzo[k]fluoranthene |
| 7H-Dibenzo[c,g]carbazole | Cadmium |
| Acetaldehyde | Captan |
| Acetamide | Chromium (hexavalent compounds) |
| Acrylonitrile | Chrysene |

| | |
|---------|---------------------|
| Aniline | Dibenz[a,h]acridine |
|---------|---------------------|

and Reproductive Toxins:

| | |
|----------------------------|-----------------|
| Arsenic (inorganic Oxides) | Cadmium |
| Carbon disulfide | Carbon monoxide |
| Lead | Nicotine |
| Toluene | Tobacco Smoke |
| Urethane | |

13. Plaintiff conducted research, from which it identified Defendants' practice of exposing, knowingly and intentionally, persons in California, including its tenants, visitors, guests, invitees, contractors, and employees at its facilities located at 231 N. La Peer Drive, Beverly Hills, CA 90211; 415 N. Oakhurst Drive, Beverly Hills, CA 90210; 9231-9245½ Doheny Road, West Hollywood, CA 90069; and 637 Hauser Blvd. Los Angeles, CA 90036 (collectively "Facilities") to the Proposition 65-listed chemical constituents and byproducts of Tobacco Smoke without first providing clear and reasonable warnings of such to the exposed persons prior to exposure.

14. Plaintiff has for the last few years consistently complained to Defendants and the management of the facility located at 231 N. La Peer Drive, Beverly Hills, CA 90211 ("La Peer Facility") regarding the horrible effects that the Tobacco Smoke, and in particular the Second Hand Smoke in this facility has had on her life and on the lives of her family, and in particular on the health of her children. Plaintiff's children are constantly exposed to the Chemicals known to the State of California to cause cancer and reproductive toxicity that are found in Tobacco Smoke and its constituents and byproducts because of the Second Hand Smoke permeating the La Peer Facility, and in particular coming into their apartment, and are always suffering from health problems.

15. Plaintiff and her children have trouble breathing in their own apartment, and guests are uncomfortable to visit them because of the smoke.

16. In the last three years that Plaintiff has been exposed to Second Hand Smoke in the La Peer Facility she has had two separate miscarriages. It is a known fact that Second Hand Smoke causes irreversible reproductive harm, such as the injuries suffered by Plaintiff.

FIRST CAUSE OF ACTION

(By Rozita Haiimpour against Property Management Associates, Property Management Associates, Inc., and Does 1-20 For Violation Of Proposition 65, The Safe Drinking Water And Toxic Enforcement Act Of 1986 (Health & Safety Code, §§ 25249.5, et seq.)).

ENVIRONMENTAL EXPOSURE

17. Plaintiff repeats and incorporates by reference paragraphs 1 through 16 of this complaint as though fully set forth herein.

18. Each of the Defendants permits smoking in the Facilities, and in particular in the La Peer Facility, as well as in other properties owned, managed, and/or operated by Defendants including in tenants' apartments, lobby, hallways, and outdoor pool area. When persons enter areas of the Facilities, and in particular the La Peer Facility, as well as other properties owned, managed, and/or operated by Defendants where other persons are smoking, or have recently been smoking, these persons are exposed to airborne Tobacco Smoke and its constituents and byproducts through inhalation and dermal contact. Persons are similarly exposed to the chemicals contained in Tobacco Smoke and its byproducts when they enter areas that are both adjacent to the areas where smoking occurs and where barriers between the areas where smoking occurs and the areas adjacent to the areas where smoking occurs are insufficient to prevent airborne Tobacco Smoke from escaping from the designated smoking areas and into the adjacent areas. Second

1 Hand Smoke emanating from the apartments of other tenants in the facility constantly
2 enters Plaintiff's apartment and is inhaled by her and her family, including her young
3 children and infant. Defendants have been told about this on dozens of occasions and
4 have done nothing about it.
5

6 19. Plaintiff is informed, believes, and thereon alleges that Tobacco Smoke contains
7 chemicals known to the State of California to cause cancer and/or reproductive toxicity,
8 including, but not limited to, those chemicals listed in paragraph 12.
9

10 20. On February 27, 1987, the Governor of California added (4-Aminodiphenyl), 2-
11 Naphthylamine, 4-Aminobiphenyl, Arsenic (inorganic arsenic compounds), Benzene, and
12 Chromium (hexavalent compounds) to the list of chemicals known to the State to cause
13 cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety
14 Code sections 25249.9 and 25249.10, twenty months after the additions of (4-
15 Aminodiphenyl), 2-Naphthylamine, 4-Aminobiphenyl, Arsenic (inorganic arsenic
16 compounds), Benzene, and Chromium (hexavalent compounds) to the list of chemicals
17 known to the State to cause cancer, (4-Aminodiphenyl), 2-Naphthylamine, 4-
18 Aminobiphenyl, Arsenic (inorganic arsenic compounds), Benzene, and Chromium
19 (hexavalent compounds) became fully subject to Proposition 65 warning requirements
20 and discharge prohibitions.
21

22 21. On July 1, 1987, the Governor of California added Acrylonitrile, Benz[a]ntracene,
23 Benzo[a]pyrene, Benzo[b]fluoranthene, Benzo[j]fluoranthene, and Benzo[k]fluoranthene
24 to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, §
25 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
26 twenty months after the additions of Acrylonitrile, Benz[a]ntracene, Benzo[a]pyrene,
27

Benzo[b]fluoranthene, Benzo[j]fluoranthene, and Benzo[k]fluoranthene to the list of chemicals known to the State to cause cancer, Acrylonitrile, Benz[a]anthracene, Benzo[a]pyrene, Benzo[b]fluoranthene, Benzo[j]fluoranthene, and Benzo[k]fluoranthene became fully subject to Proposition 65 warning requirements and discharge prohibitions.

22. On October 1, 1987, the Governor of California added Cadmium to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)).

Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Cadmium to the list of chemicals known to the State to cause cancer, Cadmium became fully subject to Proposition 65 warning requirements and discharge prohibitions.

23. On January 1, 1988, the Governor of California added 2-Nitropropane and 7H-Dibenzo[c,g]carbazole to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of 2-Nitropropane and 7H-Dibenzo[c,g]carbazole to the list of chemicals known to the State to cause cancer, 2-Nitropropane and 7H-Dibenzo[c,g]carbazole became fully subject to Proposition 65 warning requirements and discharge prohibitions.

24. On April 1, 1988, the Governor of California added 1,3 Butadiene and Acetaldehyde to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of 1,3 Butadiene and Acetaldehyde to the list of chemicals known to the State to cause cancer, 1,3 Butadiene and Acetaldehyde became fully subject to Proposition 65 warning requirements and discharge prohibitions.

25. On October 1, 1989, the Governor of California added 1,1-Dimethylhydrazine and 1-Naphthylamine to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of 1, 1-Dimethylhydrazine and 1-Naphthylamine to the list of chemicals known to the State to cause cancer, 1, 1-Dimethylhydrazine and 1-Naphthylamine became fully subject to Proposition 65 warning requirements and discharge prohibitions.
26. On January 1, 1990, the Governor of California added Acetamide, Aniline, Captan, and Chrysene to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of Acetamide, Aniline, Captan, and Chrysene to the list of chemicals known to the State to cause cancer, Acetamide, Aniline, Captan, and Chrysene became fully subject to Proposition 65 warning requirements and discharge prohibitions.
27. On February 27, 1987, the Governor of California added Lead to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Lead to the list of chemicals known to the State to cause cancer, Lead became fully subject to Proposition 65 warning requirements and discharge prohibitions.
28. On April 1, 1988, the Governor of California added Tobacco smoke to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Tobacco smoke to the list of chemicals known to the State to

cause cancer, Tobacco smoke became fully subject to Proposition 65 warning requirements and discharge prohibitions.

29. On July 1, 1989, the Governor of California added Carbon disulfide and Carbon monoxide to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of Carbon disulfide and Carbon monoxide to the list of chemicals known to the State to cause cancer, Carbon disulfide and Carbon monoxide became fully subject to Proposition 65 warning requirements and discharge prohibitions.

30. On April 1, 1990, the Governor of California added Nicotine to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Nicotine to the list of chemicals known to the State to cause cancer, Nicotine became fully subject to Proposition 65 warning requirements and discharge prohibitions.

31. On January 1, 1991, the Governor of California added Toluene to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Toluene to the list of chemicals known to the State to cause cancer, Toluene became fully subject to Proposition 65 warning requirements and discharge prohibitions.

32. On October 1, 1994, the Governor of California added Urethane to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after

addition of Urethane to the list of chemicals known to the State to cause cancer, Urethane became fully subject to Proposition 65 warning requirements and discharge prohibitions.

33. On May 1, 1997, the Governor of California added Arsenic (inorganic Oxides) and Cadmium to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of Arsenic (inorganic Oxides) and Cadmium to the list of chemicals known to the State to cause cancer, Arsenic (inorganic Oxides) and Cadmium became fully subject to Proposition 65 warning requirements and discharge prohibitions.

34. Plaintiff is informed, believes, and thereon alleges that between August 1, 2005 and the present each of the Defendants knowingly and intentionally exposed persons, including tenants, visitors, guests, invitees, and contractors at the Facilities and other properties owned, managed, and/or operated by the Defendants, to the constituent chemicals in Tobacco Smoke and its byproducts, listed in paragraphs 12 and 20 through 33, without first giving clear and reasonable warning of such to the exposed persons before the time of exposure. Each of the facilities referenced where Defendants' alleged violations of Proposition 65 occurred is located in the State of California. Defendants thereby violated Proposition 65.

35. The principal routes of exposure are through direct inhalation and dermal contact with Tobacco Smoke and its byproducts by tenants, visitors, guests, invitees, contractors, and employees at the Facilities, and in particular at the La Peer Facility, as well as other properties owned, managed, and/or operated by Defendants in the apartments of tenants, the hallways, and outdoor pool areas of the Facilities, and in particular the La Peer

1 Facility, as well as other properties owned, managed, and/or operated by Defendants into
2 which Second Hand Smoke enters. Through inhalation, meaning Tobacco Smoke being
3 breathed in via the ambient air by the exposed persons causing contact with their mouths,
4 throats, bronchi, esophagi, and lungs, the exposure of Tobacco Smoke and its constituent
5 chemicals and byproducts predictably generate risks of cancer and reproductive toxicity
6 to the exposed persons described above.

7
8
9
10 36. At all times relevant to this action, Defendants knew that persons, including but not
11 limited to, tenants, visitors, guests, invitees, contractors, and employees at the Facilities
12 and other properties owned, managed, and/or operated by them were being exposed to
13 Tobacco Smoke and its constituent chemicals and byproducts through the routes of
14 exposure described in paragraph 35. Therefore, while in the course of doing business at
15 the Facilities, and in particular at the La Peer Facility, as well as other properties owned,
16 managed, and/or operated by Defendants from August 1, 2005 through the present,
17 Defendants have been and are knowingly and intentionally exposing tenants, visitors,
18 guests, invitees, contractors, and employees at the Facilities, and in particular at the La
19 Peer Facility, as well as other properties owned, managed, and/or operated by the
20 Defendants to the Proposition 65-listed chemicals contained in Tobacco Smoke and its
21 byproducts without first giving clear or reasonable warning of such to exposed persons.

22 37. The locations of the exposures are at the Facilities, and in particular the La Peer Facility,
23 as well as other properties owned, managed, and/or operated by Defendants, including in
24 the lobby, hallways, outdoor pool areas, and the apartments in to which Tobacco Smoke
25 and/or Second Hand Smoke enters.
26
27
28

38. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of Proposition 65 as to Tobacco Smoke and its byproducts at the Facilities, and in particular at the La Peer Facility, as well as other properties owned, managed, and/or operated by the Defendants have been ongoing and continuous and have continued to the date of the signing of this complaint, so that a separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to Tobacco Smoke and/or its byproducts at the Facilities, and in particular at the La Peer Facility, as well as other properties owned, managed, and/or operated by the Defendants.

39. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of Proposition 65 mentioned herein is ever continuing.

OCCUPATIONAL EXPOSURES

40. Plaintiff repeats and incorporates by reference paragraphs 1 through 39 of this complaint as though fully set forth herein.

41. Each of the Defendants permits smoking in the Facilities, and in particular in the La Peer Facility, as well as at other properties owned, managed, and/or operated including in tenants' apartments, lobby, hallways, and outdoor pool area. When persons, including Defendants' employees, enter areas of the Facilities, and in particular the La Peer Facility, as well as other properties owned, managed, and/or operated by Defendants where other persons are smoking, or have recently been smoking, they are exposed to airborne tobacco smoke and its byproducts through inhalation and dermal contact. Persons, including Defendants' employees, are similarly exposed to the chemicals contained in Tobacco Smoke and its byproducts when they enter areas that are both adjacent to the areas where smoking occurs and where barriers between the areas where

1 smoking occurs and the areas adjacent to the areas where smoking occurs are insufficient
2 to prevent airborne Tobacco Smoke from escaping from the designated smoking areas
3 and into the adjacent areas.

4
5 42. Plaintiff is informed, believes, and thereon alleges that Tobacco Smoke contains
6 chemicals known to the State of California to cause cancer and/or reproductive toxicity,
7 including, but not limited to, those chemicals listed in paragraph 12.

8
9 43. On February 27, 1987, the Governor of California added (4-Aminodiphenyl), 2-
10 Naphthylamine, 4-Aminobiphenyl, Arsenic (inorganic arsenic compounds), Benzene, and
11 Chromium (hexavalent compounds) to the list of chemicals known to the State to cause
12 cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety
13 Code sections 25249.9 and 25249.10, twenty months after the additions of (4-
14 Aminodiphenyl), 2-Naphthylamine, 4-Aminobiphenyl, Arsenic (inorganic arsenic
15 compounds), Benzene, and Chromium (hexavalent compounds) to the list of chemicals
16 known to the State to cause cancer, (4-Aminodiphenyl), 2-Naphthylamine, 4-
17 Aminobiphenyl, Arsenic (inorganic arsenic compounds), Benzene, and Chromium
18 (hexavalent compounds) became fully subject to Proposition 65 warning requirements
19 and discharge prohibitions.

20
21
22 44. On July 1, 1987, the Governor of California added Acrylonitrile, Benz[a]ntracene,
23 Benzo[a]pyrene, Benzo[b]fluoranthene, Benzo[j]fluoranthene, and Benzo[k]fluoranthene
24 to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, §
25 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
26 twenty months after the additions of Acrylonitrile, Benz[a]ntracene, Benzo[a]pyrene,
27 Benzo[b]fluoranthene, Benzo[j]fluoranthene, and Benzo[k]fluoranthene to the list of
28

chemicals known to the State to cause cancer, Acrylonitrile, Benz[a]anthracene, Benzo[a]pyrene, Benzo[h]fluoranthene, Benzo[j]fluoranthene, and Benzo[k]fluoranthene became fully subject to Proposition 65 warning requirements and discharge prohibitions.

45. On October 1, 1987, the Governor of California added Cadmium to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)).

Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Cadmium to the list of chemicals known to the State to cause cancer, Cadmium became fully subject to Proposition 65 warning requirements and discharge prohibitions.

46. On January 1, 1988, the Governor of California added 2-Nitropropane and 7H-Dibenzo[c,g]carbazole to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of 2-Nitropropane and 7H-Dibenzo[c,g]carbazole to the list of chemicals known to the State to cause cancer, 2-Nitropropane and 7H-Dibenzo[c,g]carbazole became fully subject to Proposition 65 warning requirements and discharge prohibitions.

47. On April 1, 1988, the Governor of California added 1,3 Butadiene and Acetaldehyde to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of 1,3 Butadiene and Acetaldehyde to the list of chemicals known to the State to cause cancer, 1,3 Butadiene and Acetaldehyde became fully subject to Proposition 65 warning requirements and discharge prohibitions.

- 2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
48. On October 1, 1989, the Governor of California added 1,1-Dimethylhydrazine and 1-Naphthylamine to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of 1, 1-Dimethylhydrazine and 1-Naphthylamine to the list of chemicals known to the State to cause cancer, 1, 1-Dimethylhydrazine and 1-Naphthylamine became fully subject to Proposition 65 warning requirements and discharge prohibitions.
49. On January 1, 1990, the Governor of California added Acetamide, Aniline, Captan, and Chrysene to the list of chemicals known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of Acetamide, Aniline, Captan, and Chrysene to the list of chemicals known to the State to cause cancer, Acetamide, Aniline, Captan, and Chrysene became fully subject to Proposition 65 warning requirements and discharge prohibitions.
50. On February 27, 1987, the Governor of California added Lead to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Lead to the list of chemicals known to the State to cause cancer, Lead became fully subject to Proposition 65 warning requirements and discharge prohibitions.
51. On April 1, 1988, the Governor of California added Tobacco smoke to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Tobacco smoke to the list of chemicals known to the State to

cause cancer, Tobacco smoke became fully subject to Proposition 65 warning requirements and discharge prohibitions.

52. On July 1, 1989, the Governor of California added Carbon disulfide and Carbon monoxide to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after the additions of Carbon disulfide and Carbon monoxide to the list of chemicals known to the State to cause cancer, Carbon disulfide and Carbon monoxide became fully subject to Proposition 65 warning requirements and discharge prohibitions.

53. On April 1, 1990, the Governor of California added Nicotine to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Nicotine to the list of chemicals known to the State to cause cancer, Nicotine became fully subject to Proposition 65 warning requirements and discharge prohibitions.

54. On January 1, 1991, the Governor of California added Toluene to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after addition of Toluene to the list of chemicals known to the State to cause cancer, Toluene became fully subject to Proposition 65 warning requirements and discharge prohibitions.

55. On October 1, 1994, the Governor of California added Urethane to the list of chemicals known to the State to reproductive toxicity (Cal. Code Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after

1 addition of Urethane to the list of chemicals known to the State to cause cancer, Urethane
2 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

3
4 56. On May 1, 1997, the Governor of California added Arsenic (inorganic Oxides) and
5 Cadmium to the list of chemicals known to the State to reproductive toxicity (Cal. Code
6 Regs., title 22, § 12000, subd. (c)). Pursuant to Health and Safety Code sections 25249.9
7 and 25249.10, twenty months after the additions of Arsenic (inorganic Oxides) and
8 Cadmium to the list of chemicals known to the State to cause cancer, Arsenic (inorganic
9 Oxides) and Cadmium became fully subject to Proposition 65 warning requirements and
10 discharge prohibitions.

11
12 57. Plaintiff is informed, believes, and thereon alleges that between August 1, 2005 and the
13 present each of the Defendants, while in the course of doing business, knowingly and
14 intentionally exposed their employees at the Facilities, to the constituent chemicals in
15 Tobacco Smoke and its byproducts, listed in paragraphs 12 and 43 through 56, without
16 first giving clear and reasonable warning of such to the exposed employees before the
17 time of exposure. Defendants' employees exposed to the constituent chemicals in
18 Tobacco Smoke and its byproducts include maintenance workers, services personnel,
19 administrative personnel, professional personnel, and business invitees and contractors
20 who are employees of others, at the facilities owned, managed, and/or operated by
21 Defendants. Each of the facilities referenced where Defendants' alleged violations of
22 Proposition 65 occurred is located in the State of California. Defendants thereby violated
23 Proposition 65.

24
25
26 58. The principal routes of exposure are through direct inhalation and dermal contact with
27 Tobacco Smoke and its byproducts by employee at the Facilities, and in particular at the
28

1 La Peer Facility, as well as other properties owned, managed, and/or operated by
2 Defendants in the apartments of tenants, the hallways, and outdoor pool areas of the
3 Facilities, and in particular the La Peer Facility, as well as other properties owned,
4 managed, and/or operated by Defendants into which Second Hand Smoke enters.

5 Through inhalation, meaning Tobacco Smoke being breathed in via the ambient air by the
6 exposed persons, including Defendants' employees, causing contact with their mouths,
7 throats, bronchi, esophagi, and lungs, the exposure of Tobacco Smoke and its constituent
8 chemicals and byproducts predictably generate risks of cancer and reproductive toxicity
9 to the exposed persons, including Defendants' employees.

10
11 59. At all times relevant to this action, Defendants knew that persons, including, but not
12 limited to their employees at the Facilities, and in particular the La Peer Facility, and
13 other properties owned, managed, and/or operated by them were being exposed to
14 Tobacco Smoke and its constituent chemicals and byproducts through the routes of
15 exposure described in paragraph 58. Therefore, while in the course of doing business at
16 the Facilities, and in particular at the La Peer Facility, as well as other properties owned,
17 managed, and/or operated by Defendants from August 1, 2005 through the present,
18 Defendants have been and are knowingly and intentionally exposing their employees at
19 the Facilities, and in particular at the La Peer Facility, as well as other properties owned,
20 managed, and/or operated by the Defendants to the Proposition 65-listed chemicals
21 contained in Tobacco Smoke and its byproducts without first giving clear or reasonable
22 warning of such to exposed persons.

23
24 60. The locations of the exposures are at the Facilities, and in particular the La Peer Facility,
25 as well as other properties owned, managed, and/or operated by Defendants, including in
26
27
28

the lobby, hallways, outdoor pool areas, and the apartments in to which Tobacco Smoke and/or Second Hand Smoke enters.

61. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of Proposition 65 as to Tobacco Smoke and its byproducts at the Facilities, and in particular at the La Peer Facility, as well as other properties owned, managed, and/or operated by the Defendants have been ongoing and continuous and have continued to the date of the signing of this complaint, so that a separate and distinct violation of Proposition 65 occurred each and every time a person, including any of Defendants' employees, was exposed to Tobacco Smoke and/or its byproducts at the Facilities, and in particular at the La Peer Facility, as well as other properties owned, managed, and/or operated by the Defendants.

62. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of Proposition 65 mentioned herein is ever continuing.

SATISFACTION OF PRIOR NOTICE

63. On or about August 1, 2008, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6 subject to a private action to Defendants identified in the notice as Property Management Associates, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the environmental and occupational exposures described above.

64. Before sending the notice of alleged violation, Plaintiff investigated the Facilities, and in particular the La Peer Facility, and other properties owned, managed, and/or operated by Defendants, the likelihood that such conduct by Defendants would cause such

environmental and occupational exposures, and the corporate structure of each defendant, and other relevant matters.

65. Plaintiff's notice of alleged violations included a certificate of merit executed by the attorney for the noticing party, Plaintiff. The certificates of merit stated that the attorney for Plaintiff who executed the certificate had consulted with at least one person with relevant and appropriate expertise who had reviewed data regarding the respective exposures to Tobacco Smoke, its constituent chemicals, and its byproducts, which are the subject Proposition 65-listed chemicals of this action. Based on that information, the attorney for Plaintiff who executed the certificate of merit believed there was a reasonable and meritorious case for this private action. The attorney for Plaintiff attached to the certificate of merit served on the Attorney General information sufficient to establish the basis of the certificate of merit.

66. Plaintiff is commencing this action more than sixty days from the date that Plaintiff gave notice of the alleged violations to Property Management Associates and to the public prosecutors referenced in paragraph 63.

67. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor any applicable district attorney or city attorney has commenced and is diligently prosecuting an action against the Defendants.

68. Plaintiff's allegations concern an "environmental exposure," which is a knowing and intentional exposure to persons of Proposition 65-listed chemicals by a person in the course of doing business without first giving clear and reasonable warning of such to the exposed persons. Exposures occurred as mentioned in paragraphs 34 through 39, and therefore constitute an environmental exposure.

1 69. Plaintiff's allegations concern an "occupational exposure," which is a knowing and
2 intentional exposure to its employees of Proposition 65-listed chemicals by a person in
3 the course of doing business without first giving clear and reasonable warning of such to
4 the exposed employees. Exposures occurred as mentioned in paragraphs 57 through 62,
5 and therefore constitute an occupational exposure.

6
7
8 **PRAYER FOR RELIEF**

9 Plaintiff demands against each Defendant as to each Cause of Action as follows:

10 1 A permanent injunction mandating Proposition 65 compliant warnings;

11 2 Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);

12 3 Costs of suit;

13 4 Reasonable attorney fees and costs; and

14 5 Any further relief that the court may deem just and equitable.

15
16 Dated: October 13, 2008

YEROUSHALMI & ASSOCIATES

17
18
19 BY: 

20 Daniel D. Cho
21 Attorney for Plaintiff
22 Rozita Haïmpour