

MAY 16 2008

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11 SUPERIOR COURT, STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

14 Coordination Proceeding
15 Special Title (Rule (1550(b)))

16 SECONDHAND SMOKE CASES

17 This Document Relates to the following case:

18 *Consumer Advocacy Group, Inc. v. Ayers*
19 *Hotel Company, Inc., et al.,* former Los
20 Angeles County Superior Court Case No.
21 BC241602

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

JUDGMENT AND ORDER
APPROVING PROPOSITION 65
STIPULATED CONSENT JUDGMENT
BY CONSUMER ADVOCACY GROUP,
INC. AND PACIFICA HOTEL COMPANY

Date Proceeding Coordinated: June 18, 2001

Trial Date: None set

Hearing: May 16, 2008

Time: 10:00 a.m.

Place: Department 307

Judge: Hon. William Highberger

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

SECONDHAND SMOKE CASES

[PROPOSED] STIPULATED CONSENT
JUDGMENT

This Document Relates to in the following
cases:

*Consumer Advocacy Group, Inc. v. Ayers
Hotel Company, Inc., The Rim Corporation,
Hotel Managers Group, LLC, Elkor Realty
Corporation, Tishman Hotel Corporation
and Pacifica Hotel Company, formerly Los
Angeles County Superior Court
Case No. 241602*

1 **1. INTRODUCTION**

2 1.1 Plaintiff. Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG"), on its
3 own behalf and as a representative of the People of the State of California, is a non-profit
4 public interest corporation.

5 1.2 Defendants. Pacifica Hotel Company ("Pacifica") owns, operates and/or
6 manages numerous hotels under various brands throughout the State of California.

7 1.3 Covered Properties. The properties owned, operated or managed by
8 Pacifica are referred to collectively as the "Covered Properties." The Covered Properties
9 are identified in Exhibit A to this Consent Judgment.

10 1.4 Proposition 65. Health and Safety Code Sections 25249.5 et seq.
11 ("Proposition 65") prohibits, among other things, a company consisting of ten or more
12 employees from knowingly and intentionally exposing an individual to chemicals that are
13 known to the State of California to cause cancer, birth defects and other reproductive
14 harm without first providing a clear and reasonable warning to such individuals.
15 Exposures can occur as a result of a consumer product exposure, an occupational
16 exposure or an environmental exposure.

17 1.5 Proposition 65 Chemicals. The State of California has officially listed
18 various chemicals pursuant to Health and Safety Code section 25249.8 as chemicals
19 known to the State of California to cause cancer and/or reproductive toxicity.

20 1.6 Judicial Council Coordinated Proceedings. Before suing under
21 Proposition 65, a plaintiff must first give the defendant a 60-day notice of the violations.
22 CAG has sent 60-day notices to a number of industries, including the hotel industry,
23 throughout the State alleging violations of Proposition 65 and Section 17200 et seq. of
24 the Business and Professions Code (the "Unfair Competition Act"). The cases filed
25 subsequent to CAG's notices have been deemed complex and are proceeding in Los
26 Angeles County Superior Court as Judicial Council Coordinated Proceeding No. 4182
27 ("JCCP 4182").

28

1 1.7 Plaintiff's 60-Day Notice and Lawsuit Against Pacifica. More than sixty
2 days prior to filing, CAG served on Pacifica a document entitled "Amended 60 Day
3 Notice of Intent to Sue Under Health & Safety Code Sections 25249.6" (the "Notices").
4 The Notice is attached hereto as Exhibit B. The Notice states, among other things, that
5 Plaintiff believed that Pacifica was in violation of Proposition 65 for knowingly and
6 intentionally exposing consumers, customers, and employees of the Covered Properties,
7 as well as the public, to certain Proposition 65 listed chemicals. Among those
8 Proposition 65 noticed chemicals were tobacco products, tobacco smoke and secondhand
9 tobacco smoke (and their constituent chemicals), (collectively "Noticed Chemicals").
10 This Consent Judgment covers only those specified Noticed Chemicals. CAG
11 subsequently filed the instant action against Pacifica. ("CAG Lawsuit"). The CAG
12 lawsuit asserts the Proposition 65 violation alleged in the Notices, as well as violation of
13 the unfair Competition Act.

14 1.8 Pacifica's Answer. Pacifica filed a timely answer in the CAG Lawsuit
15 denying each and every allegation set forth in the CAG Lawsuit and asserting numerous
16 affirmative defenses.

17 1.9 The Consumer Defense Group. On July 24, 2002, the Consumer Defense
18 Group ("CDG") filed a lawsuit in the Superior Court of the State of California for the
19 County of Orange entitled *Consumer Defense Group v. Pacifica Hotel Company*, Orange
20 County Superior Court Case No. 02CC00220 naming Pacifica as a defendant (the "CDG
21 Lawsuit"). In addition to the alleged Proposition 65 violations, the CDG Lawsuit
22 includes allegations of violations of the Unfair Competition Act. CDG filed an add-on
23 petition to coordinate the CDG Lawsuit with JCCP 4182, which was granted on
24 October 2, 2002.

25 1.10 Purpose of Consent Judgment. In order to avoid continued and protracted
26 litigation, CAG and Pacifica wish to resolve certain tobacco exposure issues raised by the
27 Notices and the CAG Lawsuit and the CDG Lawsuit, pursuant to the terms and
28 conditions described herein. In entering into this Consent Judgment, both CAG and

1 Pacifica recognize that this Consent Judgment is a full and final settlement of all claims
2 related to tobacco products, tobacco smoke and secondhand tobacco smoke (and their
3 constituent chemicals), that were raised or that could have been raised in the Notices and
4 the CAG Lawsuit. In addition, in entering into this Consent Judgment, both CAG and
5 Pacifica recognize that this Consent Judgment is a full and final settlement of all such
6 Noticed Chemicals claims that were raised or that could have been raised in the CDG
7 Lawsuit, because the settlement of the CAG Lawsuit moots any and all claims in the
8 CDG Lawsuit and because CDG has agreed to dismiss the CDG Lawsuit against the
9 Pacifica. CAG and Pacifica also intend for this Consent Judgment to provide, to the
10 maximum extent permitted by law, *res judicata* protection for Pacifica against all other
11 claims based on the same or similar allegations as to the Noticed Chemicals.

12 1.11 No Admission. Pacifica disputes that it has violated Proposition 65 as
13 described in the Notices and the CAG Lawsuit. In particular, Pacifica contends that no
14 warning is required for the exposures CAG alleges. CAG disputes Pacifica's defenses.

15 Based on the foregoing, nothing contained in this Consent Judgment shall be
16 construed as an admission by Pacifica that any action that Pacifica may have taken, or
17 failed to take, violates Proposition 65 or any other provision of any other statute,
18 regulation or principal of common law, including without limitation the Unfair
19 Competition Act. Pacifica expressly denies any alleged violations of Proposition 65
20 and/or the Unfair Competition Act.

21 1.12 Effective Upon Final Determination. Pacifica's willingness to enter into
22 this Consent Judgment is based upon the understanding that this Consent Judgment will
23 fully and finally resolve all claims related to tobacco products, tobacco smoke and
24 secondhand tobacco smoke (and their constituent chemicals), brought both by CAG and
25 by CDG, and that this Consent Judgment will have *res judicata* effect to the extent
26 allowed by law with regards to both the Proposition 65 allegations and the Unfair
27 Competition Act allegations.

28

1 This Consent Judgment shall have no force and effect unless and until (i) the CDG
2 Lawsuit is dismissed with prejudice as to Pacifica, and (ii) any litigation by any third
3 party regarding the CAG Lawsuit and/or the validity of this Consent Judgment is fully
4 and finally resolved in Pacifica's favor, including any and all appeals.

5 2. JURISDICTION

6 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only,
7 CAG and Pacifica stipulate that this Court has jurisdiction over the allegations of
8 violations contained in the CAG Lawsuit.

9 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only,
10 Plaintiff and Pacifica stipulate that this Court has personal jurisdiction over Pacifica as to
11 the acts alleged in the CAG Lawsuit.

12 2.3 Venue. Venue is proper in the County of Los Angeles for resolution of the
13 allegations made in the CAG Lawsuit.

14 2.4 Jurisdiction to Enter Consent Judgment. This Court has jurisdiction to
15 enter this Consent Judgment as a full and final settlement and resolution of the allegations
16 contained in the Notices, the CAG Lawsuit and of all claims that were or could have been
17 raised based on the facts alleged therein or arising therefrom. This includes allegations
18 relating to both Proposition 65 and the Unfair Competition Act.

19 3. INJUNCTIVE RELIEF:

20 CLEAR AND REASONABLE WARNINGS

21 3.1 Environmental and Occupational Exposure Warnings. With regard to the
22 alleged exposures to the Noticed Chemicals, Pacifica either has posted and agrees to
23 continue to maintain, or will post within ninety (90) days following the entry of
24 judgment, a warning including substantially the following language at the primary points
25 of entry at each of the Covered Properties and on the employees' bulletin board or inside
26 of the employees' handbook:

27 **WARNING:**

28 This Facility Contains Chemicals Known to the State of California to Cause

1 Cancer and Birth Defects or Other Reproductive Harm.

2 Pacifica further agrees to continue to maintain a warning with substantially the
3 following language at every location at each of the Covered Properties where smoking is
4 permitted, including either inside of any guestroom that is designated for smokers or at
5 the elevator landings on each floor with designated smoking rooms:

6 **WARNING:**

7 This Area is a Designated Smoking Area. Tobacco Smoke is Known to the
8 State of California to Cause Cancer and Birth Defects or Other
9 Reproductive Harm.

10 Each of the warning signs in this Section 3.1 shall conform with the regulations for
11 alcoholic beverage warning signs in terms of size and print (22 Cal. Code of Regulations
12 §26D1(b)(1)(D)) and shall be located where they can be easily seen. The provision of
13 said warnings shall be deemed to satisfy any and all obligations under Proposition 65 by
14 any and all person(s) or entity(ies) with respect to any and all environmental and
15 occupational exposures to Noticed Chemicals. The warnings described in this Section
16 3.1 may be combined with other information on a single sign and may be provided by the
17 same media and in the same or similar format in which other hotel information is
18 provided to guests, employees and to the public.

19 3.2 Consumer Product Warning. Pacifica has been in compliance with
20 Proposition 65 warning requirements relating to consumer product exposures with respect
21 to tobacco products because they or their gift shop operators/lessees post, and have
22 posted, warnings at the Covered Properties; and Pacifica is not legally responsible for the
23 conduct of their gift shop operators/Lessees. Pacifica agrees to continue or take
24 reasonable steps to assure that their gift shop operators/lessees maintain a warning at
25 those Covered Properties where cigars, cigarettes, and other tobacco products are sold.
26 For those Covered Properties, the following warning shall continue to be prominently
27 displayed at or near the point of sale of such products:

28

1 **WARNING:**

2 Tobacco Products Contain/Produce Chemicals Known to the State of
3 California to Cause Cancer and Birth Defects or Other Reproductive Harm.

4 The warnings set forth in this Section 3.2 shall be displayed at the retail outlet with such
5 conspicuousness, as compared with other words, statements, designs, or devices as to
6 render the warnings likely to be read and understood by an ordinary individual under
7 customary conditions of purchase or use, consistent with Title 22, California Code of
8 Regulations, Section 12601(b)(3).

9 3.3 Compliance. Pacifica's compliance with paragraphs 3.1 and 3.2 is deemed
10 to fully satisfy Pacifica's obligations under Proposition 65 with respect to any exposures
11 and potential exposures to Noticed Chemicals in all respects and to any and all person(s)
12 and entity(ies). Pacifica's compliance with paragraphs 3.1 and 3.2 will not relieve them
13 of any obligation to continue to provide the statutorily approved warnings for alcohol.

14 3.4 Future Laws or Regulations. In lieu of complying with the requirements of
15 paragraphs 3.1 and 3.2 hereof, if: (a) any future federal law or regulation which governs
16 the warning provided for herein preempts state authority with respect to said warning; or
17 (b) any future warning requirements with respect to the subject matter of said paragraphs
18 is proposed by any industry association and approved by the State of California, or (c)
19 any future new state law or regulation specifying a specific warning for hotels with
20 respect to the subject matter of said paragraphs, Pacifica may comply with the warning
21 obligations set forth in paragraphs 3.1 and 3.2 of this Judgment by complying with such
22 future federal or state law or regulation or such future warning requirement upon notice
23 to Plaintiff.

24 3.5 Statutory Amendment to Proposition 65. In the event that there is a
25 statutory or other amendment to Proposition 65, or regulations are adopted pursuant to
26 Proposition 65, which would exempt Pacifica, the "Released Parties," as defined at
27 paragraph 4.2 below, or the class to which Pacifica belong, from providing the warnings
28 described herein, then, upon the adoption of such statutory amendment or regulation, and

1 to the extent provided for in such statutory amendment or regulation, Pacifica shall be
2 relieved from its obligation to provide the warnings set forth herein.

3 4. RELEASE AND CLAIMS COVERED

4 4.1 Effect of Judgment. The Judgment is a full and final judgment with respect
5 to any claims regarding the Noticed Chemicals asserted in the CAG Lawsuit against the
6 Released Parties and each of them, and the Notice against Pacifica regarding the Covered
7 Properties, including, but not limited to: (a) claims for any violations of Proposition 65
8 by the Released Parties and each of them including, but not limited to, claims arising
9 from consumer product, environmental and occupational exposures to the Noticed
10 Chemicals, wherever occurring and to whomever occurring, through and including the
11 date upon which the Judgment becomes final, including any and all appeals; (b) claims
12 for violation of the Unfair Competition Act (Cal. Bus. & Prof. Code § 17200, *et seq.*)
13 arising from the foregoing circumstances, including, but not limited to, Plaintiff CAG's
14 asserted right to injunctive and monetary relief, and (c) the Released Parties' continuing
15 responsibility to provide the warnings mandated by Proposition 65 with respect to the
16 Noticed Chemicals.

17 4.2 Release. Except for such rights and obligations as have been created under
18 this Consent Judgment, Plaintiff, on its own behalf and bringing an action "in the public
19 interest" pursuant to California Health and Safety Code Section 25249.7(d), and "acting
20 for the general public" pursuant to California Business and Professions Code
21 Section 17205, with respect to the matters regarding the Noticed Chemicals alleged in the
22 CAG Lawsuit, does hereby fully, completely, finally and forever release, relinquish and
23 discharge: (a) Pacifica Hotel Company, (b) the past, present, and future owners, lessors,
24 sublessors, managers, franchisees and operators of, and any others with any interest in,
25 the Covered Properties, as related to the Covered Properties and (c) the respective
26 officers, directors, shareholders, affiliates, agents, employees, attorneys, successors and
27 assigns of the persons and entities described in (a) and (b) immediately above
28 (collectively (a), (b), and (c) are the "Released Parties") of and from any and all claims,

1 actions, causes of action, demands, rights, debts, agreements, promises, liabilities,
2 damages, accountings, costs and expenses, whether known or unknown, suspected or
3 unsuspected, of every nature whatsoever which Plaintiff has or may have against the
4 Released Parties, arising directly or indirectly out of any fact or circumstance occurring
5 prior to the date upon which the Judgment becomes final, including any and all appeals,
6 relating to alleged violations of the Unfair Competition Act and/or Proposition 65 by the
7 Pacifica Hotel Company and its respective agents, servants and employees, being
8 hereinafter referred to as the "Released Claims." In sum, the Released Claims include
9 any and all allegations made, or that could have been made, by Plaintiff with respect to
10 the Noticed Chemicals relating to Proposition 65 and the Unfair Competition Act,
11 relating to the Covered Properties.

12 4.3 Intent of Parties. It is the intention of the Parties to this release that, upon
13 entry of judgment and conclusion of any and all appeals or litigation relating to (i) this
14 Consent Judgment itself, and (ii) the CAG Lawsuit itself, that this Consent Judgment
15 shall be effective as a full and final accord and satisfaction and release of each and every
16 Released Claim. In furtherance of this intention, Plaintiff acknowledges that it is familiar
17 with California Civil Code section 1542, which provides as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
19 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
20 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.

21 Plaintiff hereby waives and relinquishes all of the rights and benefits that Plaintiff has, or
22 may have, under California Civil Code section 1542 (as well as any similar rights and
23 benefits which they may have by virtue of any statute or rule of law in any other state or
24 territory of the United States). Plaintiff hereby acknowledges that it may hereafter
25 discover facts in addition to, or different from, those which it now knows or believes to
26 be true with respect to the subject matter of this Consent Judgment and the Released
27 Claims, but that notwithstanding the foregoing, it is Plaintiff's intention hereby to fully,
28 finally, completely and forever settle and release each, every and all Released Claims,

1 and that in furtherance of such intention, the release herein given shall be and remain in
2 effect as a full and complete general release, notwithstanding the discovery or existence
3 of any such additional or different facts.

4 4.4 Plaintiff's Ability to Represent Public. Plaintiff hereby warrants and
5 represents to Pacifica and the Released Parties that (a) Plaintiff has not previously
6 assigned any Released Claim, and (b) Plaintiff has the right, ability and power to release
7 each Released Claim.

8 4.5 No Further Force and Effect. Plaintiff and Pacifica hereby request that this
9 Court enter judgment pursuant to this Consent Judgment. In connection therewith,
10 Plaintiff and Pacifica waive their right, if any, to a hearing with respect to the entry of
11 said judgment. In the event that (i) this Court denies the joint motion to approve the
12 Consent Judgment brought by Plaintiff and Pacifica pursuant to Health & Safety Code
13 Section 25249.7, as amended, (ii) a decision by this Court to approve the Consent
14 Judgment is appealed and overturned in the California Court of Appeal or the California
15 Supreme Court, (iii) this Court (or any appellate court hearing the matter) fails to dismiss
16 with prejudice the CDG Lawsuit as against Pacifica or (iv) a third party files litigation to
17 contest the validity of this Consent Judgment or against either Plaintiff and/or Pacifica
18 relating to this Consent Judgment, then upon notice by any party hereto to the other party
19 hereto, this Consent Judgment shall not be of any further force or effect and the parties
20 shall be restored to their respective rights and obligations as though this Consent
21 Judgment had not been executed by the parties.

22 Pacifica expressly reserves the right, upon notice to Plaintiff, to withdraw from
23 this Consent Judgment until such time as (i) the CDG Lawsuit is dismissed with prejudice
24 as to Pacifica and (ii) any third-party litigation regarding the CAG Lawsuit and/or the
25 validity of this Consent Judgment is fully and finally resolved in Pacifica's favor,
26 including any and all appeals.

27 5. ATTORNEY'S FEES AND COSTS

28 5.1 Payment to Yeroushalmi & Associates. In an effort to defray CAG's expert

1 fees and costs, costs of investigation, attorney's fees, or other costs incurred relating to
2 this matter, defendants shall pay to the firm of Yeroushalmi & Associates the sum of
3 \$30,600.00. This amount shall be paid within ten (10) days following the latter of (i)
4 entry of a final judgment, including any and all appeals, approving this Consent
5 Judgment and (ii) entry of a final judgment, including any and all appeals, dismissing the
6 CDG Lawsuit as against Pacifica.

7 **6. PRECLUSIVE EFFECT OF CONSENT JUDGMENT**

8 6.1 Entry of Judgment Entry of judgment by the Court pursuant to this
9 Consent Judgment, *inter alia*:

10 (i) Constitutes full and fair adjudication of all claims against Pacifica,
11 including, but not limited to, all claims set forth in the CAG Lawsuit, based upon alleged
12 violations of Proposition 65 and the Unfair Competition Act, as well as any other statute,
13 provision of common law or any theory or issue which arose from the alleged failure to
14 provide warning of exposure to tobacco products, tobacco smoke and secondhand
15 tobacco smoke (and their constituent chemicals), which may be present on the Covered
16 Properties identified in Exhibit A and referred to in paragraph 1.3 and which are known
17 to the State of California to cause cancer, birth defects, and/or other reproductive harm;

18 (ii) Bars any and all other persons, on the basis of *res judicata* and the
19 doctrine of mootness and/or the doctrine of collateral estoppel, from prosecuting against
20 any Released Party any claim with respect to the Noticed Chemicals alleged in the CAG
21 Lawsuit, and based upon alleged violations of (a) Proposition 65, (b) the Unfair
22 Competition Act, or (c) any other statute, provision of common law or any theory or issue
23 which arose or arises from the alleged failure to provide warning of exposure to tobacco
24 products, tobacco smoke and secondhand tobacco smoke (and their constituent
25 chemicals), which may be present on the Covered Properties identified in Exhibit A and
26 referred to in paragraph 1.3 and which are known to the State of California to cause
27 cancer, birth defects, and/or other reproductive harm.

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1 addressed to such party at the address set forth below, or to such other or further address
2 provided in a notice sent under the terms of this paragraph, three days following the
3 deposit of such notice in the mails.

4 Notices pursuant to this paragraph shall be sent to the parties as follows:

5 (a) If to Plaintiff:

6 Reuben Yeroushalmi
7 Yeroushalmi & Associates
8 3700 Wilshire Boulevard, Suite 480
9 Los Angeles, CA 90010
10 Facsimile Number: (213) 382-3430

11 (b) If to Defendant Pacifica Hotel Company:

12 Thomas Gamble, Esq.
13 Pacifica Hotel Company
14 1933 Cliff Drive, Suite #1
15 Santa Barbara, CA 93109
16 Facsimile Number: (805) 957-0082

17 copy to:

18 Michael G. Romey, Esq.
19 Latham & Watkins LLP
20 633 West Fifth Street, Suite 4000
21 Los Angeles, CA 90071
22 Facsimile Number: (213) 891-8763

23 or to such other place as may from time to time be specified in a notice to each of the
24 parties hereto given pursuant to this paragraph as the address for service of notice on such
25 party.

26 10. INTEGRATION

27 10.1 Integrated Writing. This Consent Judgment constitutes the final and
28 complete agreement of the parties hereto with respect to the subject matter hereof and
supersedes all prior or contemporaneous negotiations, promises, covenants, agreements
or representations concerning any matters directly, indirectly or collaterally related to the
subject matter of this Consent Judgment. The Parties hereto have expressly and
intentionally included in this Consent Judgment all collateral or additional agreements
which may, in any manner, touch or relate to any of the subject matter of this Consent

1 Judgment and, therefore, all promises, covenants and agreements, collateral or otherwise,
2 are included herein and therein. It is the intention of the parties to this Consent Judgment
3 that it shall constitute an integration of all their agreements, and each understands that in
4 the event of any subsequent litigation, controversy or dispute concerning any of its terms,
5 conditions or provisions, no party hereto shall be permitted to offer or introduce any oral
6 or extrinsic evidence concerning any other collateral or oral agreement between the
7 parties not included herein.

8 **11. TIMING**

9 11.1 Time of Essence. Time is of the essence in the performance of the terms
10 hereof.

11 **12. COMPLIANCE WITH REPORTING REQUIREMENTS**

12 12.1 Reporting Forms; Presentation to Attorney General. The parties agree to
13 comply with the reporting form requirements referenced in Health & Safety Code
14 §25249.7(f). Pursuant to the new regulations promulgated under Health & Safety Code
15 §25249.7(f), Plaintiff presented this Consent Judgment to the California Attorney
16 General's office upon receiving all necessary signatures. It was then presented to the
17 Superior Court for the County of Los Angeles forty-five (45) days later.

18 **13. COUNTERPARTS**

19 13.1 Counterparts. This Consent Judgment may be signed in counterparts and
20 shall be binding upon the parties hereto as if all of said parties executed the original
21 hereof. The parties agree that the delivery of facsimile and/or electronic signatures shall
22 be acceptable and shall for all purposes be deemed to have the same force and effect as
23 original signatures.

24 **14. WAIVER**

25 14.1 No Waiver. No waiver by any party hereto of any provision hereof shall be
26 deemed to be a waiver of any other provision hereof or of any subsequent breach of the
27 same or any other provision hereof.

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15. AMENDMENT

15.1 In Writing. This Consent Judgment cannot be amended or modified except by a writing executed by the parties hereto that expresses, by its terms, an intention to modify this Consent Judgment.

16. SUCCESSORS

16.1 Binding Upon Successors. This Consent Judgment shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective administrators, trustees, executors, personal representatives, successors and permitted assigns.

17. CHOICE OF LAWS

17.1 California Law Applies. Any dispute regarding the interpretation of this Consent Judgment, the performance of the parties pursuant to the terms of this Consent Judgment, or the damages accruing to a party by reason of any breach of this Consent Judgment shall be determined under the laws of the State of California, without reference to principles of choice of laws.

18. NO ADMISSIONS

18.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has been reached by the parties to avoid the costs of prolonged litigation. By entering into this Consent Judgment, neither Plaintiff nor Pacifica admit any issue of fact or law, including any violations of Proposition 65 or the Unfair Competition Act. The settlement of claims herein shall not be deemed to be an admission or concession of liability or culpability by any party, at any time, for any purpose. Neither this Consent Judgment, nor any document referred to herein, nor any action taken to carry out this Consent Judgment, shall be construed as giving rise to any presumption or inference of admission or concession by Pacifica as to any fault, wrongdoing or liability whatsoever. Neither this Consent Judgment, nor any of its terms or provisions, nor any of the negotiations or other proceedings connected with it, nor any other action taken to carry out this Consent Judgment, by any of the parties hereto, shall be referred to, offered as evidence, or

1 received in evidence in any pending or future civil, criminal or administrative action or
2 proceeding, except in a proceeding to enforce this Consent Judgment, to defend against
3 the assertion of the Released Claims or as otherwise required by law.

4 **19. REPRESENTATION**

5 19.1 Construction of Consent Judgment. Plaintiff and Pacifica each
6 acknowledge and warrant that they have been represented by independent counsel of their
7 own selection in connection with the prosecution and defense of the CAG Lawsuit, the
8 negotiations leading to this Consent Judgment and the drafting of this Consent Judgment;
9 and that in interpreting this Consent Judgment, the terms of this Consent Judgment will
10 not be construed either in favor of or against any party hereto.

11 **20. AUTHORIZATION**

12 20.1 Authority to Enter Consent Judgment. Each of the signatories hereto
13 certifies that he or she is authorized by the party he or she represents to enter into this
14 Consent Judgment, to stipulate to the Judgment, and to execute and approve the
15 Judgment on behalf of the party represented.

16
17 Dated: December __, 2007

18 CONSUMER ADVOCACY GROUP, INC.

19
20 By *[Signature]*

21 Consumer Advocacy Group, Inc.

22 Dated: December __, 2007

23 PACIFICA HOTEL COMPANY.

24
25 By _____

26 Pacifica Hotel Company

1 received in evidence in any pending or future civil, criminal or administrative action or
 2 proceeding, except in a proceeding to enforce this Consent Judgment, to defend against
 3 the assertion of the Released Claims or as otherwise required by law.

4 **19. REPRESENTATION**

5 **19.1 Construction of Consent Judgment.** Plaintiff and Pacifica each
 6 acknowledge and warrant that they have been represented by independent counsel of their
 7 own selection in connection with the prosecution and defense of the CAG Lawsuit, the
 8 negotiations leading to this Consent Judgment and the drafting of this Consent Judgment,
 9 and that in interpreting this Consent Judgment, the terms of this Consent Judgment will
 10 not be construed either in favor of or against any party hereto.

11 **20. AUTHORIZATION**

12 **20.1 Authority to Enter Consent Judgment.** Each of the signatories hereto
 13 certifies that he or she is authorized by the party he or she represents to enter into this
 14 Consent Judgment, to stipulate to the Judgment, and to execute and approve the
 15 Judgment on behalf of the party represented.

16
 17 Dated: December __, 2007

18 CONSUMER ADVOCACY GROUP, INC.

19
 20 By _____
 21 Consumer Advocacy Group, Inc.

22 ~~Dated: December 16, 2008~~
 23 ^{January}

24 PACIFICA HOTEL COMPANY.

25 By Theresa G. Smith, sec.
 26 Pacifica Hotel Company

1 Approved as to form:

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3 Dated: December __, 2007

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YEROUSHALMI & ASSOCIATES

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By _____
Reuben Yeroushalmi
Attorneys for Plaintiff Consumer Advocacy
Group, Inc.

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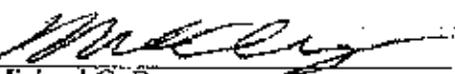
January 16
Dated: ~~December~~ __, 2008

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LATHAM & WATKINS LLP

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By 
Michael G. Romey
Attorneys for Defendant Pacifica Hotel
Company.

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Approved as to form:

Dated: ~~December __, 2007~~

YERUSHALMI & ASSOCIATES

By Reuben Yerushalmi
Attorneys for Plaintiff Consumer Advocacy
Group, Inc.

Dated: December __, 2007

LATHAM & WATKINS LLP

By Michael G. Romey
Attorneys for Defendant Pacifica Hotel
Company.

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EXHIBIT B
60-Day Notices

Pacific Hotel Company
1033 Anacapa St.
Santa Barbara, CA 93101
ATTN: Thomas J. Gamble

April 5, 2002

RE: 60-DAY NOTICE OF INTENT TO SUE UNDER HEALTH & SAFETY CODE SECTION 25249.6

*This notice is given by Consumer Advocacy Group, Inc. 9899 Santa Monica Boulevard, # 225, Beverly Hills CA 90212. The noticing party must be contacted through the following entity: Reuben Yeroushalmi, Yeroushalmi & Associates; 3700 Wilshire Blvd. Ste. 480 Los Angeles CA 90010; 213-382-3183. (This Proposition 65 notice fully incorporates herein the contents and effects of the previous Proposition 65 notice sent to the noticed parties. As such, the allegations raised in the prior notices further enhance the ones made herein). This letter constitutes notification that Consumer Advocacy Group, Inc. believes and alleges that Proposition 65, *The Safe Drinking Water and Toxic Enforcement Act* (commencing with Health & Safety Code Section 25249.5) and California Code of Regulations, title 22, section 12601 have been violated by the following company(s) and/or entity(s) (hereinafter, "the violators") and during the time period referenced below:*

Pacific Hotel Company

PERIOD OF VIOLATION			
From:	4/5/98	Through	4/5/02
			And continuing thereafter.

OCCUPATIONAL EXPOSURES

While in the course of doing business, each and every day, at the following geographical location(s):

See The Location of The Source of The Exposure on the attached Exhibit A

during the time period referenced above, the violators have been and are *knowingly and intentionally* exposing certain employees of the violators (*see* detailed description below) to *tobacco smoke* and its constituent chemicals as listed below and designated by the State of California to cause cancer and reproductive toxicity, pursuant to California Code of Regulations, title 22, section 12000, *without first giving clear and reasonable warning* of that fact to the exposed employee (Health & Safety Code Section 25249.6).

The *source* of exposure includes *tobacco smoke* and its constituent chemicals as listed below at *the location of the source of the exposure on the attached Exhibit A*. Specifically, the exposure to certain employees (*see* detailed description of employees below) took place in the following areas: in areas and rooms designated for smoking; in the lobbies, hallways, and indoor/outdoor corridors that are adjacent or nearby or on the floors where rooms or areas designated for smoking (hereinafter, "rooms or areas designated for smoking" or its equivalent refers to areas where smoking has been permitted by the violators) are geographically located at *the location of the source of the exposure on the attached Exhibit A*. The *employees exposed* to the said chemicals at such location(s) include, but are not limited to, the employees corresponding to the following *description of the occupations and types of tasks performed*:

- **Certain employees entering guest rooms designated for smoking and/or areas designated for smoking, where smoking has been or is occurring by smokers:**
Such employees include: (1) violators' cleaning personnel (who clean and prepare the guest rooms, e.g., change towels & bed sheets, etc.), bell boys (who deliver or pickup customers' luggage), room service personnel (who deliver and pickup room service items), and repair/maintenance personnel (who repair or service appliances and other damages in the said rooms), who enter the guest rooms designated for smoking; (2) *any* employees, regardless of the employees' occupation and job task (e.g., *see* description

of occupations and tasks mentioned above), who have been and are entering or passing through *other areas/rooms designated for smoking* including, but not limited to, outdoor entrances, outdoor corridors, other areas, where smoking is permitted by the violators, and where smoking has been and is occurring.

- **Certain employees entering or passing through lobbies, hallways, and corridors, where such areas are affected by smoke that permeates, migrates, and travels from nearby or adjacent areas and rooms designated for smoking:**

Such employees include: (1) reasonably foreseeable employees (i.e., see description of occupations and tasks mentioned above), who pass through or enter lobbies, hallways, and corridors (that are nearby or adjacent to or on the floor where areas or rooms designated for smoking are located), and where such areas are affected by the *tobacco smoke* (that originates from rooms and areas designated for smoking) which permeates, migrates, and travels through the openings of doors and windows and through other structural openings of the areas/rooms designated for smoking into the said lobbies, hallways, and corridors.

In the above-mentioned location(s) and areas/rooms designated for smoking by the violators, smoking has been and is occurring in the said location(s) and areas/rooms by room guests registered at rooms designated for smoking and by smokers at *other areas designated for smoking*. As such, certain employees described above have been and are being exposed to *tobacco smoke* resulting from smoking that has been or is occurring at the violators' premises, in the manner elaborated above. Therefore, the violators have been and are unlawfully exposing the above-mentioned exposed employees to *tobacco smoke* and its constituent chemicals as listed below and designated by the State of California to cause cancer and reproductive toxicity, pursuant to California Code of Regulations, title 22, section 12000, because the violators failed to first give clear and reasonable warning of that fact to the exposed employees described above (Health & Safety Code Section 25249.6).

The route of exposure for Occupational Exposures to the chemicals listed below, by the exposed employees described above, have been and are from *tobacco smoke* (in the smoke designated areas/rooms and affected areas as describe-above) through inhalation, meaning that *tobacco smoke* has been and is being breathed in via the ambient air by the exposed persons causing inhalation contact with their mouths, throats, bronchi, esophagi, and lungs. The exposure of *tobacco smoke* and its constituent chemicals as listed below to the mouths, throats, bronchi, esophagi, and lungs predictably generate risks of cancer and reproductive toxicity to the exposed employees described above.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a.) the conduct of manufacturers occurring outside the State of California; and (b.) employers with less than 10 employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

ENVIRONMENTAL EXPOSURES

While in the course of doing business, each and every day, at the following geographical location(s):

See The Location of The Source of The Exposure on the attached Exhibit A

during the time period referenced above, the violators have been and are knowingly and intentionally exposing certain persons and the public (see detailed description below) to *tobacco smoke* and its constituent chemicals as listed below and designated by the State of California to cause cancer and reproductive toxicity, pursuant to California Code of Regulations, title 22, section 12000, without first giving clear and reasonable warning of that fact to such persons and the public (Health & Safety Code Section 25249.6).

For each such type and means of exposure listed above, the violators have exposed and are exposing the above referenced persons to:

TOBACCO SMOKE

CARCINOGENS

V

(4-Aminodiphenyl)	Arsenic (inorganic arsenic compounds)	Dibenz[a,h]anthracene	N-Nitrosodiphenylamine
1,1-Dimethylhydrazine (UDEM)	Benz[a]anthracene	Dibenz[a,j]acridine	N-Nitrosodi-n-butylamine
1,3-Butadiene	Benzene	Dibenz[a,e]pyrene	N-Nitrosomethylsethylamine
1-Naphthylamine	Benzo[a]pyrene	Dibenzo[a,h]pyrene	N-Nitrosomorpholine
2-Naphthylamine	Benzo[b]fluoranthene	Dibenzo[a,i]pyrene	N-Nitrosotobaccoamine
2-Nitropropane	Benzo[k]fluoranthene	Dibenzo[a,l]pyrene	N-Nitrosopiperidine
4-Aminobiphenyl	Benzo[ghi]perylene	Dichlorodiphenyltrichloroethane (DDT)	N-Nitrosopyrrolidine
7H-Dibenzo[c,g]carbazole	Cadmium	Formaldehyde (gas)	Ortho-Anisidine
Acetaldehyde	Captan	Hydrazine	Ortho-Toluidine
Acetamide	Chromium (hexavalent compounds)	Lead and lead compounds	Urethane (Ethyl carbamate)
Acrylonitrile	Chrysene	Nickel and certain nickel compounds	
Aniline	Dibenz[a,h]acridine	N-Nitrosodiphenylamine	

REPRODUCTIVE TOXINS

V

Arsenic (inorganic Oxides)	Carbon monoxide	Nicotine	Urethane
Cadmium	Lead	Tobacco	
Carbon disulfide			

Proposition 65 (Health & Safety Code Section 25249.7) requires that notice and intent to sue be given to the violator(s) 60 days before the suit is filed. With this letter, *Consumer Advocacy Group, Inc.* gives notice of the alleged violations to the violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within 60 days of the sending of this notice, *Consumer Advocacy Group, Inc.* may file suit. This notice covers all violations of Proposition 65 that are currently known to *Consumer Advocacy Group, Inc.* from information now available to it. With the copy of this notice submitted to the violators, a copy of the following is attached: *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.*

Note: *Consumer Advocacy Group, Inc.*, in the interest of the public, is determined to resolve this matter in the least costly manner and one which would be beneficial to all parties involved. In order to encourage the expeditious and proper resolution of this matter, *Consumer Advocacy Group, Inc.* is prepared to forgo all monetary recovery including penalties, restitution, and attorney fees and costs in the event that the noticed facility adopts a complete "smoke-free" policy (and thus discontinuing the rooms/areas designated for smoking).

Dated: April 5, 2002

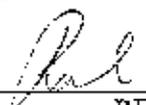
By: 
 REUBEN YERUSHALMI
 Attorney for
Consumer Advocacy Group, Inc.

EXHIBIT A

THE LOCATION OF THE SOURCE OF THE EXPOSURE

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACTION 1988
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1988 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 500 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the following:

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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

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

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

exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

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

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

HOW IS PROPOSITION 65 ENFORCED?

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

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

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

§14000. Chemicals Required by State or Federal Law to Have been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1988 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required (Health and Safety Code 25249.8(c)).

Readers should note a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation.

The Birth Defect Prevention Act of 1984 (SB 550) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients.

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(e)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: April 5, 2002

By: REUBEN YERUSHALMI

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010.

I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Exhibit A: List of Alleged Violators' Names and Locations
- 3) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 4) Certificate of Merit: Health and Safety Code Section 25249.7(d) *Attorney General Copy (only sent to Attorney General's Office)*
- 5) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.

Date of Mailing: 4/9/02 Place of Mailing: Los Angeles, CA

NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

▽
Alleged Violators

Pacific Hotel Company 1035 Anacapa St. Santa Barbara, CA 93101 ATTN: Thomas L. Garbilo

[Redacted]

[Redacted]

▽
Government Agencies

Los Angeles City Attorney 200 N. Main St. Ste. 1800 Los Angeles, CA 90012

Office of the Attorney General P.O. BOX 70550 Oakland, CA 94612-0550
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San Luis Obispo County District Attorney County Government Center, Rm. 450 San Luis Obispo, CA 93408
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Los Angeles County District Attorney 240 W. Temple St. 18th Floor Los Angeles, CA 90012

San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101
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Santa Barbara County District Attorney 1105 Santa Barbara St. Santa Barbara, CA 93101

Monterey County District Attorney PO Box 1331 Salinas, CA 93902

San Diego County District Attorney 330 W. Broadway, Ste. 1300 San Diego, CA 92101-3803
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[Redacted]

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

Dated: 4/9/02

By: [Signature]
Brian Keith Andrews