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19 SUPERIOR COURT, STATE OF CALIFORNIA
20 COUNTY OF LOS ANGELES

21 Coordination Proceeding
22 Special Title (Rule (1550(b)))

23 SECONDHAND SMOKE CASES

24 This Document Relates to the following cases:

25 *Consumer Advocacy Group, Inc. v. Wyndham*
26 *International, Inc., et al.*
27 Los Angeles County Superior Court
28 Case No. BC 214078

and

Consumer Advocacy Group, Inc. v. Hilton
Corporation, Wyndham Hotel Corporation,
et al.
Los Angeles County Superior Court
Case No. BC 276355

Original Returned Copy
Of Original Filed
Los Angeles Superior Court

MAY 16 2008

John A. Clarke, Executive Officer/Clerk
By: I. Flores, Deputy

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

JUDGMENT AND ORDER
APPROVING PROPOSITION 65
STIPULATED CONSENT JUDGMENT
BY CONSUMER ADVOCACY GROUP,
INC. AND WYNDHAM
INTERNATIONAL, INC.

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

1 On May 16, 2008, at 10:00 a.m., the Honorable William Highberger, in Department 307
2 of this Court, heard the Motion to Approve [Proposed] Stipulated Consent Judgment by
3 Consumer Advocacy Group, Inc. ("Plaintiff") and, Wyndham International, Inc., Patriot
4 American Hospitality, Inc., and Wind International, Inc., formerly known as Wyndham
5 International, Inc. ("Defendants"). Appearances are in the record. The Court, having considered
6 the documents filed in connection with this matter and the arguments of counsel, has arrived at
7 the following conclusions and SO ORDERS:

8 A. Plaintiff and Defendants executed a [Proposed] Stipulated Consent Judgment, which they
9 have submitted to this Court for approval pursuant to Proposition 65 (Health & Saf. Code, §§
10 25249.5, et seq.).

11 B. This Court has considered the Consent Judgment and determined that it represents a fair,
12 reasonable, and adequate settlement between Plaintiff and Defendants.

13 1. The Proposed Settlement provides that Defendants will:

- 14
- 15 • Provide Proposition 65 warnings; and
 - 16 • Pay Plaintiff \$54,800 for its attorney fees.

17 2. The court grants the Motion to Approve [Proposed] Stipulated Consent Judgment
18 by Plaintiff and Defendants in its entirety pursuant to Health and Safety Code section 25249.7,
19 subdivision (f)(4) after making the following findings.

20 a. Plaintiff followed all procedural rules in seeking approval of the Consent
21 Judgment;

22 b. The Consent Judgment requires "clear and reasonable" Proposition 65 compliant
23 warnings for extant exposures to Proposition 65-listed chemicals;

24 c. The award of \$54,800 in attorney fees and costs as set forth in the Consent
25 Judgment is appropriate and reasonable under California law given the total fees and
26 costs incurred by Plaintiff and its counsel of record in prosecuting this action as to
27 Defendants;
28


1 d. The terms of the Consent Judgment are in the public interest consistent with
2 Health and Safety Code section 25249.7, subdivision (d); and

3 e. Plaintiff adequately represented the public interest in entering into the Consent
4 Judgment.

5
6 **JUDGMENT**

- 7
- 8 1. The Court approves the [Proposed] Stipulated Consent Judgment, an executed copy of
9 which is attached as Exhibit A, as the Judgment of this Court resolving this action
10 between plaintiff, Consumer Advocacy Group, Inc., on one hand, and defendants,
11 Wyndham International, Inc., Patriot American Hospitality, Inc., and Wind International,
12 Inc., formerly known as Wyndham International, Inc., on the other.
 - 13 2. The Court Clerk is to enter this Judgment as the Judgment of the Court as to defendants,
14 Wyndham International, Inc., Patriot American Hospitality, Inc., and Wind International,
15 Inc., formerly known as Wyndham International, Inc.
 - 16 3. Wyndham International, Inc., Patriot American Hospitality, Inc., and Wind International,
17 Inc., formerly known as Wyndham International, Inc. are dismissed with prejudice from
18 this action.
 - 19 4. Except as otherwise set forth in the Consent Judgment, all parties shall bear their own
20 attorney fees and costs.
- 21
22
23

24 Dated: 5/16, 2008

25
26 
27 THE HONORABLE WILLIAM
28 HIGHBERGER JUDGE OF THE SUPERIOR
COURT

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17 WYNDHAM INTERNATIONAL, INC. and
18 PATRIOT AMERICAN HOSPITALITY, INC. and
19 WIND INTERNATIONAL, INC., formerly known as
20 WYNDHAM INTERNATIONAL, INC.

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF LOS ANGELES

23 Coordination Proceeding
24 Special Title (Rule 1550(b))

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

25 SECONDHAND SMOKE CASES

[PROPOSED] STIPULATED CONSENT
JUDGMENT

26 This Document Relates to Defendants in the
27 following cases:

28 *Consumer Advocacy Group, Inc. v. Wyndham
International, Inc., et al.*

Los Angeles County Superior Court
Case No. BC 214078

and

*Consumer Advocacy Group, Inc. v. Hilton
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1. INTRODUCTION

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

1.2 Defendants. Wyndham International, Inc., Patriot American Hospitality, Inc. and Wind International, Inc., formerly known as Wyndham International, Inc. ("Wyndham" or "Defendants") own, operate and/or manage numerous hotels under the Wyndham brand throughout the State of California. Wyndham also owns, operates and/or manages numerous other hotels under different brand names throughout the State of California. In addition, certain of the Wyndham hotels are operated as franchises in the State of California franchised by Wyndham (the "Franchisees"). Collectively, all of these hotels and the Franchisees are referred to as the "Wyndham Defendants."

1.3 Covered Properties. The properties owned, operated or managed by Wyndham and the Franchisees are referred to collectively as the "Covered Properties." The Covered Properties are identified in Exhibit A to this Consent Judgment.

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

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

1.6 First Wave of Proposition 65 Cases. Before suing under Proposition 65, a plaintiff must first give the defendant a 60-day notice of the violations. Since approximately 1998, plaintiff CAG has sent 60-day notices to a number of industries, including the hotel

1 industry, throughout the State alleging violations of Proposition 65 and Section 17200 et seq.
2 of the Business and Professions Code (the "Unfair Competition Act"). The notices, in
3 general, were based on alleged exposures to consumers, customers, guests, employees and
4 members of the general public to tobacco and/or tobacco products and/or secondhand tobacco
5 smoke. In 1999 a trial court in Los Angeles County Superior Court ruled that the 60-day
6 notices in these cases were inadequate and dismissed the cases. The California Court of
7 Appeal upheld the lower court's ruling on appeal.

8 1.7 Judicial Council Coordinated Proceedings. The second wave of cases, based on
9 new 60-day notices, include claims against hotels, gas stations, mini marts, and drugstores,
10 among others, and allege secondhand smoke exposures as well as exposures to tobacco and
11 tobacco products. These cases have been deemed complex and are proceeding in Los
12 Angeles County Superior Court as Judicial Council Coordinated Proceeding No. 4182
13 ("JCCP 4182"). Most of the cases in JCCP 4182 have been filed by Consumer Advocacy
14 Group ("CAG"). Most, if not all, of Wyndham Defendants' Covered Properties are the
15 subject of lawsuits brought by CAG in JCCP 4182. The following two lawsuits brought by
16 CAG include Wyndham Defendants and/or Covered Properties:

- 17 (1) Consumer Advocacy Group, Inc. v. Wyndham International, Inc., Patriot
18 American Hospitality, Hyatt Hotels, Hyatt Corporation, Hyatt International,
19 Loews Santa Monica Beach, and Loews Coronado Bay, Los Angeles County
20 Superior Court Case No. BC 214078, filed July 26, 1999;
- 21 (2) Consumer Advocacy Group, Inc. v. Hilton Corporation, Vagabond Inns, La
22 Quinta Inns, Starwood Hotels and Resorts, Kintetsu Enterprises Company of
23 America, Wyndham Hotel Corporation, Pacifica Hosts, Inc., Accor North
24 America Corporation, Los Angeles County Superior Court Case No. BC
25 276355, filed June 22, 2002;

26 Collectively, these two cases are referred to as the "CAG Lawsuits." The CAG Lawsuits
27 allege violations of both Proposition 65 and the Unfair Competition Act. On March 20, 2002,
28 the Court granted a motion for judgment on the pleadings filed by Wyndham and other

1 Defendants, dismissing the environmental and occupational exposure allegations with
2 prejudice due to inadequate notice in the first CAG action identified above. The Court denied
3 the Defendants' motion for judgment on the pleadings as to the consumer product exposures,
4 finding that the 60-day notices underlying the CAG Lawsuits, for the consumer product
5 exposures only, were adequate. Since that date, CAG has filed new 60-day notices and new
6 or amended complaints against the Wyndham Defendants.

7 1.8 Plaintiff's 60-Day Notice. More than sixty days prior to filing suit in this
8 action, Plaintiff CAG served on each of the Wyndham Defendants a document entitled
9 "Amended 60 Day Notice of Intent to Sue Under Health & Safety Code Sections 25249.6"
10 (the "Notices"). The Notice is attached hereto as Exhibit B. The Notice stated, among other
11 things, that Plaintiff believed that Wyndham Defendants were in violation of Proposition 65
12 for knowingly and intentionally exposing consumers, customers, and employees of the
13 Covered Properties, as well as the public, to certain Proposition 65 listed chemicals. Among
14 those Proposition 65 noticed chemicals were tobacco products, tobacco smoke and
15 secondhand tobacco smoke (and their constituent chemicals), (collectively "Noticed
16 Chemicals"). This Consent Judgment covers only those specified Noticed Chemicals.

17 1.9 Wyndham Defendants' Answer. Wyndham Defendants filed a timely answer in
18 the CAG Lawsuits denying each and every allegation set forth in the CAG Lawsuits and
19 asserting numerous affirmative defenses.

20 1.10 The McKenzie Group Lawsuit. On July 24, 2002 The McKenzie Group
21 ("TMG") filed a lawsuit in the Superior Court of the State of California for the County of
22 Orange entitled *The McKenzie Group v. Wyndham International, Inc., et al*, Orange County
23 Superior Court Case No. 02CC00206 naming Wyndham and Patriot American Hospitality,
24 Inc., as defendants (the "TMG Lawsuit"). In addition to the alleged Proposition 65 violations,
25 the TMG Lawsuit includes allegations of violations of the Unfair Competition Act. TMG
26 filed an add-on petition to coordinate the TMG Lawsuit with JCCP 4182, which was granted
27 on October 2, 2002.

28

1 1.11 Purpose of Consent Judgment. In order to avoid continued and protracted
2 litigation, Plaintiff CAG and Wyndham Defendants wish to resolve certain tobacco exposure
3 issues raised by the Notices and the CAG Lawsuits and the TMG Lawsuit, pursuant to the
4 terms and conditions described herein. In entering into this Consent Judgment, both Plaintiff
5 CAG and Wyndham Defendants recognize that this Consent Judgment is a full and final
6 settlement of all claims related to tobacco products, tobacco smoke and secondhand tobacco
7 smoke (and their constituent chemicals), that were raised or that could have been raised in the
8 Notices and the CAG Lawsuits. In addition, in entering into this Consent Judgment, both
9 Plaintiff and Wyndham Defendants recognize that this Consent Judgment is a full and final
10 settlement of all such Noticed Chemicals claims that were raised or that could have been
11 raised in the TMG Lawsuit, because the settlement of the CAG Lawsuits moots any and all
12 claims in the TMG Lawsuit and because TMG has agreed to dismiss the TMG Lawsuit
13 against the Wyndham Defendants. Plaintiff CAG and Wyndham Defendants also intend for
14 this Consent Judgment to provide, to the maximum extent permitted by law, *res judicata*
15 protection for Wyndham Defendants against all other claims based on the same or similar
16 allegations as to the Noticed Chemicals.

17 1.12 No Admission. Wyndham Defendants dispute that they have violated
18 Proposition 65 as described in the Notices and the CAG Lawsuits. In particular, Wyndham
19 Defendants contend that no warning is required for the exposures Plaintiff alleges. Plaintiff
20 disputes the Wyndham Defendants' defenses.

21 Based on the foregoing, nothing contained in this Consent Judgment shall be construed
22 as an admission by Plaintiff or Wyndham Defendants that any action that Wyndham
23 Defendants may have taken, or failed to take, violates Proposition 65 or any other provision
24 of any other statute, regulation or principal of common law, including without limitation the
25 Unfair Competition Act. Wyndham Defendants expressly deny any alleged violations of
26 Proposition 65 and/or the Unfair Competition Act.

27 1.13 Effective Upon Final Determination. Wyndham Defendants' willingness to
28 enter into this Consent Judgment is based upon the understanding that this Consent Judgment

1 will fully and finally resolve all claims related to tobacco products, tobacco smoke and
2 secondhand tobacco smoke (and their constituent chemicals), brought both by Plaintiff CAG
3 and by TMG, and that this Consent Judgment will have *res judicata* effect to the extent
4 allowed by law with regards to both the Proposition 65 allegations and the Unfair
5 Competition Act allegations.

6 This Consent Judgment will have no force and effect unless and until (i) the TMG
7 Lawsuit is dismissed with prejudice as to the Wyndham Defendants, and (ii) any litigation by
8 any third party regarding the CAG Lawsuits and/or the validity of this Consent Judgment is
9 fully and finally resolved in Wyndham Defendants' favor, including any and all appeals.

10 2. JURISDICTION

11 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only,
12 Plaintiff and Wyndham Defendants stipulate that this Court has jurisdiction over the
13 allegations of violations contained in the CAG Lawsuits.

14 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, Plaintiff
15 and Wyndham Defendants stipulate that this Court has personal jurisdiction over the
16 Wyndham Defendants as to the acts alleged in the CAG Lawsuits.

17 2.3 Venue. Venue is proper in the County of Los Angeles for resolution of the
18 allegations made in the CAG Lawsuit.

19 2.4 Jurisdiction to Enter Consent Judgment. This Court has jurisdiction to enter
20 this Consent Judgment as a full and final settlement and resolution of the allegations
21 contained in the Notices, the CAG Lawsuits and of all claims that were or could have been
22 raised based on the facts alleged therein or arising therefrom. This includes allegations
23 relating to both Proposition 65 and the Unfair Competition Act.

24 3. INJUNCTIVE RELIEF:

25 CLEAR AND REASONABLE WARNINGS

26 3.1 Environmental and Occupational Exposure Warnings. With regard to the
27 alleged exposures to the Noticed Chemicals, Wyndham Defendants either have posted and
28 agree to continue to maintain, or will post within ninety (90) days following the entry of

1 Judgment, a warning including substantially the following language at the primary points of
2 entry at each of the Covered Properties under Wyndham's control and on the employees'
3 bulletin board or inside of the employees' handbook:

4 **WARNING:**

5 This Facility Contains Chemicals Known to the State of California to Cause
6 Cancer and Birth Defects or Other Reproductive Harm.

7 Wyndham Defendants further agree to continue to maintain a warning with
8 substantially the following language at every location at each of the Covered Properties under
9 Wyndham's control where smoking is permitted, including either inside of any guestroom that
10 is designated for smokers or at the elevator landings on each floor with designated smoking
11 rooms:

12 **WARNING:**

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

16 Each of the warning signs in this Section 3.1 shall conform with the regulations for alcoholic
17 beverage warning signs in terms of size and print (22 Cal. Code of
18 Regulations §126D1(b)(1)(D)) and shall be located where they can be easily seen. The
19 provision of said warnings shall be deemed to satisfy any and all obligations under
20 Proposition 65 by any and all person(s) or entity(ies) with respect to any and all
21 environmental and occupational exposures to Noticed Chemicals. The warnings described in
22 this Section 3.1 may be combined with other information on a single sign and may be
23 provided by the same media and in the same or similar format in which other hotel
24 information is provided to guests, employees and to the public.

25 3.2 Consumer Product Warning. Wyndham Defendants have been in compliance
26 with Proposition 65 warning requirements relating to consumer product exposures with
27 respect to tobacco products because they or their gift shop operators/lessees post, and have
28 posted, warnings at the Covered Properties; and Wyndham is not legally responsible for the

1 conduct of their gift shop operators/Lessees. Wyndham Defendants agree to continue or take
2 reasonable steps to assure that their gift shop operators/lessees maintain a warning at those
3 Covered Properties under Wyndham's control where cigars, cigarettes, and other tobacco
4 products are sold. For those Covered Properties under Wyndham's control, the following
5 warning shall continue to be prominently displayed at or near the point of sale of such
6 products:

7 **WARNING:**

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

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

15 3.3 Compliance. Wyndham Defendants' compliance with paragraphs 3.1 and 3.2 is
16 deemed to fully satisfy Wyndham Defendants' obligations under Proposition 65 with respect
17 to any exposures and potential exposures to Noticed Chemicals in all respects and to any and
18 all person(s) and entity(ies). Wyndham Defendants' compliance with paragraphs 3.1 and 3.2
19 will not relieve them of any obligation to continue to provide the statutorily approved
20 warnings for alcohol.

21 3.4 Future Laws or Regulations. In lieu of complying with the requirements of
22 paragraphs 3.1 and 3.2 hereof, if: (a) any future federal law or regulation which governs the
23 warning provided for herein preempts state authority with respect to said warning; or (b) any
24 future warning requirements with respect to the subject matter of said paragraphs is proposed
25 by any industry association and approved by the State of California, or (c) any future new
26 state law or regulation specifying a specific warning for hotels with respect to the subject
27 matter of said paragraphs, Wyndham Defendants may comply with the warning obligations
28

1 set forth in paragraphs 3.1 and 3.2 of this Judgment by complying with such future federal or
2 state law or regulation or such future warning requirement upon notice to Plaintiff.

3 3.5 Statutory Amendment to Proposition 65. In the event that there is a statutory or
4 other amendment to Proposition 65, or regulations are adopted pursuant to Proposition 65,
5 which would exempt Wyndham Defendants, the "Released Parties," as defined at paragraph
6 4.2 below, or the class to which Wyndham Defendants belong, from providing the warnings
7 described herein, then, upon the adoption of such statutory amendment or regulation, and to
8 the extent provided for in such statutory amendment or regulation, Wyndham Defendants
9 shall be relieved from its obligation to provide the warnings set forth herein.

10 4. RELEASE AND CLAIMS COVERED

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

23 4.2 Release. Except for such rights and obligations as have been created under this
24 Consent Judgment, Plaintiff, on its own behalf and bringing an action "in the public interest"
25 pursuant to California Health and Safety Code Section 25249.7(d), and "acting for the general
26 public" pursuant to California Business and Professions Code Section 17205, with respect to
27 the matters regarding the Noticed Chemicals alleged in the CAG Lawsuits, does hereby fully,
28 completely, finally and forever release, relinquish and discharge: (a) Wyndham International,

1 Inc., and American Patriot Hospitality, Inc., (b) the past, present, and future owners, lessors,
2 sublessors, managers, franchisees, and operators of, and any others with any interest in, the
3 Covered Properties, as related to the Covered Properties, and (c) the respective officers,
4 directors, shareholders, affiliates, agents, employees, attorneys, successors and assigns of the
5 persons and entities described in (a) and (b) immediately above (collectively (a), (b) and (c)
6 are the "Released Parties") of and from any and all claims, actions, causes of action,
7 demands, rights, debts, agreements, promises, liabilities, damages, accountings, costs and
8 expenses, whether known or unknown, suspected or unsuspected, of every nature whatsoever
9 which Plaintiff has or may have against the Released Parties, arising directly or indirectly out
10 of any fact or circumstance occurring prior to the date upon which the Judgment becomes
11 final, including any and all appeals, relating to alleged violations of the Unfair Competition
12 Act and/or Proposition 65 by the Wyndham Defendants and/or the Franchisees, and their
13 respective agents, servants and employees, being hereinafter referred to as the "Released
14 Claims." In sum, the Released Claims include any and all allegations made, or that could
15 have been made, by Plaintiff with respect to the Noticed Chemicals relating to Proposition 65
16 and the Unfair Competition Act, relating to the covered properties.

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

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

26 Plaintiff hereby waives and relinquishes all of the rights and benefits that Plaintiff has, or may
27 have, under California Civil Code section 1542 (as well as any similar rights and benefits
28 which they may have by virtue of any statute or rule of law in any other state or territory of

1 the United States). Plaintiff hereby acknowledges that it may hereafter discover facts in
2 addition to, or different from, those which it now knows or believes to be true with respect to
3 the subject matter of this Consent Judgment and the Released Claims, but that
4 notwithstanding the foregoing, it is Plaintiff's intention hereby to fully, finally, completely
5 and forever settle and release each, every and all Released Claims, and that in furtherance of
6 such intention, the release herein given shall be and remain in effect as a full and complete
7 general release, notwithstanding the discovery or existence of any such additional or different
8 facts.

9 4.4 Plaintiff's Ability to Represent Public. Plaintiff hereby warrants and represents
10 to Wyndham Defendants and the Released Parties that (a) Plaintiff has not previously
11 assigned any Released Claim, and (b) Plaintiff has the right, ability and power to release each
12 Released Claim.

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

27 Wyndham Defendants expressly reserve the right, upon notice to Plaintiff, to withdraw
28 from this Consent Judgment until such time as (i) the TMG Lawsuit is dismissed with

1 prejudice as to all Wyndham Defendants and (ii) any third-party litigation regarding the CAG
2 Lawsuits and/or the validity of this Consent Judgment is fully and finally resolved in
3 Wyndham's favor, including any and all appeals.

4 5. ATTORNEY'S FEES AND COSTS

5 5.1 Payment to Yeroushalmi & Associates. In an effort to defray CAG's expert fees
6 and costs, costs of investigation, attorney's fees, or other costs incurred relating to this matter,
7 defendants shall pay to the firm of Yeroushalmi & Associates the sum of fifty-four thousand
8 and eight hundred dollars (\$54,800.00). This amount shall be paid within ten (10) days
9 following the latter of (i) entry of a final judgment, including any and all appeals, approving
10 this Consent Judgment and (ii) entry of a final judgment, including any and all appeals,
11 dismissing the TMG Lawsuit as against all Wyndham Defendants.

12 6. PRECLUSIVE EFFECT OF CONSENT JUDGMENT

13 6.1 Entry of Judgment. Entry of judgment by the Court pursuant to this Consent
14 Judgment, *inter alia*:

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

23 (ii) Bars any and all other persons, on the basis of *res judicata* and the
24 doctrine of mootness and/or the doctrine of collateral estoppel, from prosecuting against any
25 Released Party any claim with respect to the Noticed Chemicals alleged in the CAG
26 Lawsuits, and based upon alleged violations of (a) Proposition 65, (b) the Unfair Competition
27 Act, or (c) any other statute, provision of common law or any theory or issue which arose or
28 arises from the alleged failure to provide warning of exposure to tobacco products, tobacco

1 smoke and secondhand tobacco smoke (and their constituent chemicals), which may be
2 present on the Covered Properties identified in Exhibit A and referred to in paragraph 1.3 and
3 which are known to the State of California to cause cancer, birth defects, and/or other
4 reproductive harm.

5 **7. DISPUTES UNDER THE CONSENT JUDGMENT**

6 7.1 Disputes. In the event that a dispute arises with respect to either party's
7 compliance with the terms of this Consent Judgment, the Parties shall meet, either in person
8 or by telephone, and endeavor to resolve the dispute in an amicable manner. No action may
9 be taken to enforce the provisions of the Judgment in the absence of such a good faith effort
10 to resolve the dispute prior to the taking of such action. In the event that legal proceedings
11 are initiated to enforce the provisions of the Judgment, however, the prevailing party in such
12 proceeding may seek to recover its costs and reasonable attorney's fees. As used in the
13 preceding sentence, the term "prevailing party" means a party who is successful in obtaining
14 relief more favorable to it than the relief that the other party was amenable to providing
15 during the parties' good faith attempt to resolve the dispute that is the subject of such
16 enforcement action.

17 **8. THIRD-PARTY LITIGATION**

18 8.1 Duty to Cooperate. In the event of any litigation, including but not limited to
19 opposition to entry of the Consent Judgment by this Court and any or all appeals relating
20 thereto, instituted by a third party or governmental entity or official, Plaintiff and Wyndham
21 Defendants agree to affirmatively cooperate in all efforts to defend against any such
22 litigation.

23 **9. NOTICES**

24 9.1 Written Notice Required. Any and all notices between the parties provided for
25 or permitted under this Consent Judgment, or by law, shall be in writing and shall be deemed
26 duly served:

- 27 (i) When personally delivered to a party, on the date of such delivery; or
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1 (ii) When sent via facsimile to a party at the facsimile number set forth
2 below, or to such other or further facsimile number provided in a notice sent under the terms
3 of this paragraph, on the date of the transmission of that facsimile; or

4 (iii) When deposited in the United States mail, certified, postage prepaid,
5 addressed to such party at the address set forth below, or to such other or further address
6 provided in a notice sent under the terms of this paragraph, three days following the deposit
7 of such notice in the mails.

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

9 (a) If to Plaintiff:

10 Reuben Yeroushalmi
11 Yeroushalmi & Associates
12 3700 Wilshire Boulevard, Suite 480
13 Los Angeles, CA 90010
14 Facsimile Number: 213-382-3430

15 (b) If to Wyndham Defendants:

16 Mark M. Chloupek, General Counsel
17 Wind International, Inc., formerly
18 known as Wyndham International, Inc.
19 c/o LQ Management LLC
20 909 Hidden Ridge, Suite 600
21 Irving, TX 75038
22 Facsimile Number: 214-492-6500

23 copy to:
24 Scott A. Kruse
25 Gibson, Dunn & Crutcher
26 333 South Grand Avenue, Suite 4600
27 Los Angeles, CA 90071
28 Facsimile Number: 213-229-6970

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

10. INTEGRATION

10.1 Integrated Writing. This Consent Judgment constitutes the final and 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

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

10 11. TIMING

11 11.1 Time of Essence. Time is of the essence in the performance of the terms
12 hereof.

13 12. COMPLIANCE WITH REPORTING REQUIREMENTS

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

20 13. COUNTERPARTS

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

25 14. WAIVER

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

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15. AMENDMENT

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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.

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16. SUCCESSORS

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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.

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17. CHOICE OF LAWS

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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 Wyndham Defendants 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 Wyndham Defendants 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 received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a

1 proceeding to enforce this Consent Judgment, to defend against the assertion of the Released
2 Claims or as otherwise required by law.

3 **19. REPRESENTATION**

4 19.1 Construction of Consent Judgment. Plaintiff and Wyndham Defendants each
5 acknowledge and warrant that they have been represented by independent counsel of their
6 own selection in connection with the prosecution and defense of the Lawsuits, the
7 negotiations leading to this Consent Judgment and the drafting of this Consent Judgment; and
8 that in interpreting this Consent Judgment, the terms of this Consent Judgment will not be
9 construed either in favor of or against any party hereto.

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20. AUTHORIZATION

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

Dated: December __, 2007

CONSUMER ADVOCACY GROUP, INC.

By _____

CONSUMER ADVOCACY GROUP, INC.

Dated: December __, 2007

WYNDHAM INTERNATIONAL, INC.

By  _____

Wyndham International, Inc.

Dated: December __, 2007

PATRIOT AMERICAN HOSPITALITY, INC.

By  _____

Patriot American Hospitality, Inc.

20. AUTHORIZATION

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

Dated: December 12, 2007

CONSUMER ADVOCACY GROUP, INC.

By *Ann H. Marcus, Pres.*
CONSUMER ADVOCACY GROUP, INC.

Dated: December __, 2007

WYNDHAM INTERNATIONAL, INC.

By _____
Wyndham International, Inc.

Dated: December __, 2007

PATRIOT AMERICAN HOSPITALITY, INC.

By _____
Patriot American Hospitality, Inc.

1 Dated: December __, 2007

WIND INTERNATIONAL, INC., formerly known as WYNDHAM INTERNATIONAL, INC.

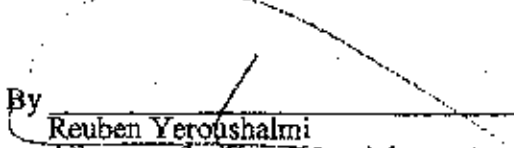
By 

Wind International, Inc., formerly known as Wyndham International, Inc.

10 Approved as to form:

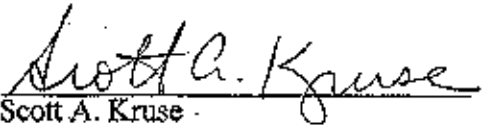
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12 1/07/08
13 Dated: December __, 2007

YEROUSHALMI & ASSOCIATES

14
15
16 By 
17 Reuben Yeroushalmi
Attorneys for Consumer Advocacy Group, Inc.

18 Dated: December 21, 2007

GIBSON, DUNN & CRUTCHER LLP

19
20
21 By 
22 Scott A. Kruse
23 Attorneys for Wyndham International, Inc.,
Patriot American Hospitality, Inc., and
Wind International, Inc., formerly known as
24 Wyndham International, Inc.

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EXHIBIT A
List of Covered Properties

EXHIBIT A

Hotel	Street	City	State	Zip
Golden Door Spa	77 Dear Spring Road	San Marcos	CA	92069
Barnabey's Hotel	3501 Sepulveda Blvd.	Manhattan Beach	CA	90266
DoubleTree Anaheim	100 The City Drive	Orange	CA	92868
Carmel Valley Ranch Luxury Resort	One Old Ranch Road	Carmel	CA	93923
Pruneyard Inn	1995 South Bascom Avenue	Campbell	CA	95009
US Grant Hotel	326 Broadway	San Diego	CA	92101
Del Mar Hilton	15575 Jimmy Durante Blvd.	Del Mar	CA	92104
Holiday Inn	275 S. Airport Blvd.	San Francisco	CA	94080
Ramada Inn	245 S. Airport Blvd.	San Francisco	CA	94080
Radisson Plaza Hotel	1471 N. 4th Street	San Jose	CA	95112
Sierra Suites	4555 Chabor Drive	Pleasanton	CA	94588
Sierra Suites	55 East Browkaw Rd.	San Jose	CA	95112
Summerfield Suites	400 Concourse Drive	Belmont	CA	94002
Summerfield Suites	21902 Lassen	Chatsworth	CA	91311
Summerfield Suites	810 South Douglas	El Segundo	CA	90245
Summerfield Suites	4545 Chabot Drive	Pleasanton	CA	94588
Summerfield Suites	1350 Huntington Avenue	San Bruno	CA	94066
Summerfield Suites	1602 Crane Court	San Jose	CA	95112
Summerfield Suites	900 Hamlin Court	Sunnyvale	CA	94089

Hotel	Street	City	State	Zip
Summerfield Suites	19901 Prairie Avenue	Torrance	CA	90503
Summerfield Suites	1000 Westmount Drive	West Hollywood	CA	90069
Wyndham Hotel - Orange County	3350 Avenue of the Arts	Costa Mesa	CA	92626
Wyndham Garden - Culver City	5990 Green Valley Circle	Culver City	CA	90230
Wyndham Hotel - LAX	6225 West Century Blvd.	Los Angeles	CA	90045
Wyndham Garden - Monrovia	700 W. Huntington Drive	Monrovia	CA	91016
Wyndham Garden - Pleasanton	5990 Stoneridge Mall Rd.	Pleasanton	CA	94588
Wyndham Garden - Marin County	1010 Northgate Drive	San Rafael	CA	94903
Wyndham Hotel - Commerce	5757 Telegraph Rd.	Commerce	CA	90040
Wyndham Checkers Hotel	535 South Grand Avenue	Los Angeles	CA	90071
Wyndham Palm Springs Hotel	888 E. Tahquitz Canyon Way	Palm Springs	CA	92262
Wyndham Emerald Plaza Hotel	400 N. Broadway	San Diego	CA	92101
Wyndham Hotel - North San Diego	5975 Lusk Blvd.	San Diego	CA	92121
Pickwick Wyndham Hotel	85 5th Street	San Francisco	CA	94103
Wyndham Hotel - San Jose	1350 North First St.	San Jose	CA	95112
Wyndham Hotel - Sunnyvale	1300 Chesapeake Terrace	Sunnyvale	CA	94089

Hotel	Street	City	State	Zip
Wyndham Bel Age Hotel	1020 N. San Vicente Blvd.	West Hollywood	CA	90069
Hyatt Newporter	1107 Jamboree Road	Newport Beach	CA	92660
Marriott Warner Center	21850 Oxnard Street	Woodland Hills	CA	91367

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EXHIBIT B
60-Day Notices

EXHIBIT B

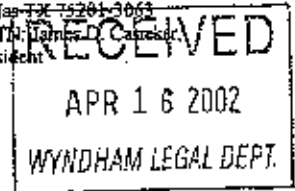
VIA U.S. MAIL

Wyndham Hotel Corporation
Wyndham Management Corp
1950 N. Stemmons Fwy., #6001
Dallas TX 95207-3107
ATTN: James D. Carreker, CFO/
President

Patriot American Hospitality Inc.
1950 N. Stemmons Fwy., #6001
Dallas TX 95207-3107
ATTN: Paul A. Hussbaum,
Chairman/CEO

Wyndham International Inc.
1950 N. Stemmons Fwy., #6001
Dallas TX 95207-3107
ATTN: Neil D. Nicastro, President
and Fred J. Kleisner, CEO

Wyndham Hotel & Resorts
2001 Bryan St., Ste 2300
Dallas TX 95207-3107
ATTN: James D. Carreker,
President



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:

*Wyndham International Inc.
Performance Hospitality Management and Wyndham Hotel Corporation
Patriot American Hospitality Inc.*

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).

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 persons including, but not limited to, the violators' customers, room guests, and visitors (*see* further detailed description 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 *persons exposed* to the said chemicals at the said location(s) include, but are not limited to, the reasonably foreseeable persons corresponding to the following *type of persons exposed at common characteristics of facilities or sources of exposure*:

- **Certain persons entering guest rooms designated for smoking and/or areas designated for smoking, where smoking has been or is occurring by smokers:**
Those persons who enter the above mentioned areas include but are not limited to any reasonably foreseeable persons who have been and are being exposed to *tobacco smoke* by entering or passing through the said areas. Such persons who enter the above-referenced areas may include, but are not limited to, violators' room guests, customers (hereinafter "customers" refer to patrons of the violators, other than room guests, going to and leaving from other parts of the hotel within the violators' premise), visitors of the room guests and customers, and delivery persons (who are not affiliated with the violators but are providing a service to the customers or room guests or visitors of the room guests at the areas within the violators' premise). Furthermore, and more specifically, the following persons have been and are being exposed to *tobacco smoke* in the above referenced areas: (1) the violators' new hotel guests checking into a room designated for smoker after a prior guest had smoked inside the same room, (2) a guest's visitor and companion (including children, infants, etc.), (3) and other reasonably foreseeable persons entering such a room (e.g., food delivery persons that are not affiliated with the violators), where such persons have been and are entering such a room while smoking has been or is occurring.
- **Certain persons entering or passing through lobbies, hallway, 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 persons include: (1) reasonably foreseeable persons (i.e., the violators' customers, room guests, visitors of customers and room guests, and aforementioned delivery persons), who pass through or enter lobbies, hallway, 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 rooms and areas designated for smoking into the said lobbies, hallway, 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 persons 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 persons 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 persons described above (Health & Safety Code Section 25249.6).

The *route* of exposure for Environmental Exposures to the chemicals listed below, by the exposed persons 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 persons described above.

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

TOBACCO SMOKE CARCINOGENS

(4-Aminodiphenyl)	Arsenic (inorganic arsenic compounds)	Dibenz[a,h]anthracene	N-Nitrosodiethylamine
1,1-Dimethylhydrazine (UDMH)	Benz[a]anthracene	Dibenz[a,j]acridine	N-Nitrosodi-n-butylamine
1,3-Butadiene	Benzene	Dibenzo[a,c]pyrene	N-Nitrosomethylethylamine
1-Naphthylamine	Benzo[a]pyrene	Dibenzo[a,h]pyrene	N-Nitrosomorpholine
2-Naphthylamine	Benzo[b]fluoranthene	Dibenzo[a,i]pyrene	N-Nitrosomonicotine
2-Nitropropane	Benzo[k]fluoranthene	Dibenzo[a,l]pyrene	N-Nitrosopiperidine
4-Aminobiphenyl	Benzo[k]fluoranthene	Dichlorodiphenyltrichloroethane (DDT)	N-Nitrosopyrrolidine
7H-Dibenzo[e,g]carbazole	Cadmium	Formaldehyde (gas)	Ortho-Anisidine
Acetaldehyde	Caplan	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-Nitrosodiethanolamine	

REPRODUCTIVE TOXINS

Arsenic (inorganic Oxides)	Carbon monoxide	Nicotine	Urethans
Cadmium	Lead	Toluene	
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 YEROUSHALMI
 Attorney for
Consumer Advocacy Group, Inc.

EXHIBIT A

THE LOCATION OF THE SOURCE OF THE EXPOSURE

1. Sunnyfield, 1000 W. Mount Dr., West Hollywood, CA 90063
2. Sunnyfield, 19901 Prairie Ave., Torrance, CA 90503
3. Sunnyfield, 1350 Huntington Ave., San Bruno, CA 94066
4. Sunnyfield, 1602 Crane Court, San Jose, CA 95112
5. Sunnyfield, 4545 Chabot Dr., Pleasanton, CA 94588
6. Sunnyfield, 810 S. Douglas Ave., El Segundo, CA 90245
7. Sunnyfield, 21902 Lassen St., Chatsworth, CA 91311
8. Sunnyfield, 900 Hamling Court, Sunnyvale, CA 94089
9. Sunnyfield, 400 Concourse Ave., Belmont, CA 94002
10. Wyndham Garden Hotel, 5757 Telegraph Road, Commerce, CA 90040
11. Wyndham Garden Hotel, 3550 Ave. of the Arts, Costa Mesa, CA 92626
12. Wyndham Garden Hotel, 1995 S. Bascon Ave., Campbell, CA 95009
13. Wyndham Checkers Hotel, 535 S. Grand Ave., Los Angeles, CA 90071
14. Wyndham Garden Hotel, 5990 Green Valley Circle, Los Angeles, CA 90230
15. Wyndham Hotel Los Angeles Airport, 6225 W. Century Blvd., Los Angeles, CA 90045
16. Wyndham Garden Hotel, 700 W. Huntington Dr., Monrovia, CA 91016
17. Wyndham Palm Springs Hotel, 888 Tahquitz Canyon Way, Palm Springs, CA 92262
18. Wyndham Garden Hotel, 5990 Stoneridge Mall Rd., Pleasanton, CA 94588
19. Wyndham Emerald Plaza Hotel, 400 W. Broadway, San Diego, CA 92101
20. Wyndham Garden Hotel, 5975 Lusk Blvd., San Diego, CA 92121
21. Wyndham Hotel San Jose, 1350 N. First Street, San Jose, CA 95112
22. Wyndham Hotel, 1010 Northgate Dr., San Rafael, CA 94903
23. Wyndham Hotel, 1300 Chesapeake Terrace, Sunnyvale, CA 94089
24. Wyndham Hotel, 1020 N. San Vicente, West Hollywood, CA 90069
25. Barnabey's Hotel, 3501 Sepulveda Blvd., Manhattan Beach, CA 90266
26. Hilton, 155755 Jimmy Durant Blvd., Del Mar, CA 92104
27. Holiday Inn, 275 South Airport Blvd., So. San Francisco, CA 94080
28. Radisson Plaza Hotel, 471 N. 4th St., San Jose, CA 95112
29. Ramada Inn, 245 S. Airport Blvd., So. San Francisco, CA 94080
30. The Pickwick, 85 Fifth Street, San Francisco, CA 94103
31. Garden Door Spa, 77 Dear Spring Rd., San Marcos, CA 92069
32. Luxury Resort, 10 Rancho Rd., Carmel, CA 92923
33. Sierra Suite, 4555 Chabot Dr., Pleasanton, CA 94588
34. Sierra Suites Hotel, 55 East Browkaw Rd., San Jose, CA 95112
35. U. S. Grant Hotel, 326 Broadway, San Diego, CA 92101

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACTION 1986
(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 1986 (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 650 chemicals have been listed as of May 1, 1986. 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 12003). 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) 445-8900.

§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 1986 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 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients.

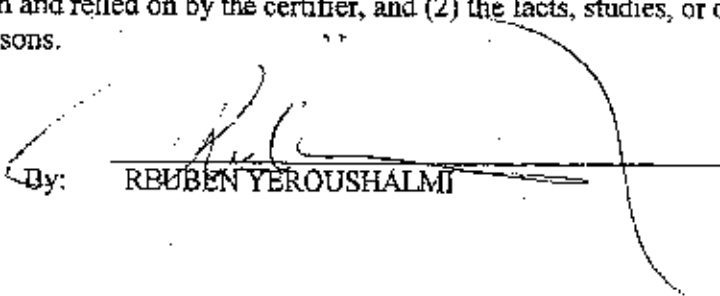
CERTIFICATE OF MERIT

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(h)(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

Wyndham Hotel Corporation Wyndham Management Corp 1950 N. Stemmons Fwy., #6001 Dallas TX 95207-3107 ATTN: James D. Carreker, CEO/ President
Wyndham Hotel & Resorts 2001 Bryan St., Ste 2300 Dallas TX 75201-3063 ATTN: James D. Carreker, President

Patriot American Hospitality Inc. 1950 N. Stemmons Fwy., #6001 Dallas TX 95207-3107 ATTN: Paul A. Nussbaum, Chairman/CEO
--

Wyndham International Inc. 1950 N. Stemmons Fwy., #6001 Dallas TX 95207-3107 ATTN: Neil D. Nicastro, President and Fred J. Kleisner, CEO
--

▽
Government Agencies

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612
Los Angeles City Attorney 200 N Main St Ste 1200 Los Angeles CA 90012
Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012
Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903
Monterey County District Attorney PO Box 1131 Salinas, CA 93902

Office of the Attorney General P.O. BOX 70550 Oakland, CA 94612-0550
Orange County District Attorney PO Box 808 Santa Ana, CA 92702
Riverside County District Attorney 4077 Main St Riverside, CA 92501
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101
San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803

San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94105
San Jose City Attorney 151 W. Mission St. San Jose, CA 95110
San Mateo County District Attorney County Government Center Redwood City, CA 94063
Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110

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: Brian Keith Andrews
Brian Keith Andrews