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19 Sajahtera, Inc., owner of The Beverly Hills Hotel

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF LOS ANGELES

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

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

24 SECONDHAND SMOKE CASES

[PROPOSED] STIPULATED CONSENT
JUDGMENT

25 This Document Relates to the following cases:

Date Proceeding Coordinated: June 18, 2001

26 *Consumer Advocacy Group, Inc. v. Hotel Sofitel,*
27 *et al.*

Department 307
Hon. William Highberger

28 Former Los Angeles County Superior Court
Case No. BC215056.

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 1.2 Defendant. Beverly Hills Hotel Corporation, a California Corporation, sued as
2 Beverly Hills Hotel, which Hotel is owned by Sajahtera, Inc., a Delaware Corporation (all
3 individually and collectively, “Beverly Hills Hotel” or “Defendant”).

4 1.3 Covered Property. The property owned or managed by Defendant relevant to this
5 Consent Judgment is The Beverly Hills Hotel and Bungalows, 9641 Sunset Blvd, Beverly Hills, CA
6 90210, the “Covered Property.”

7 1.4 Proposition 65. Health and Safety Code sections 25249.5 et seq. (“Proposition 65”)
8 prohibits, among other things, a company consisting of ten or more employees from knowingly and
9 intentionally exposing an individual to chemicals known to the State of California to cause cancer,
10 birth defects, or other reproductive harm without first providing a clear and reasonable warning to
11 such individuals. Exposures can occur as a result of a consumer product exposure, an occupational
12 exposure, or an environmental exposure.

13 1.5 Proposition 65 Chemicals. The State of California has officially listed various
14 chemicals pursuant to Health and Safety Code section 25249.8 as chemicals known to the State of
15 California to cause cancer and/or reproductive toxicity.

16 1.6 First Wave of Proposition 65 Cases. Before suing under Proposition 65, a plaintiff
17 must first give the defendant a 60-day notice of the violations. Since approximately 1998, CAG has
18 sent 60-day notices to a number of industries, including the hotel industry, throughout the State
19 alleging violations of Proposition 65. The notices to the hotel industry alleged exposures to
20 consumers, customers, guests, employees, and members of the public to tobacco and/or tobacco
21 products and/or secondhand tobacco smoke. In 1999, a trial court in Los Angeles County Superior
22 Court ruled that the 60-day notices in these cases were inadequate and dismissed the cases. This first
23 wave of notices included notice to Beverly Hills Hotel.

24 1.7 Judicial Council Coordinated Proceedings. The second wave of cases, based on new 60-day
25 notices, include claims against hotels, gas stations, mini marts, and drugstores, among others, and
26 allege secondhand smoke exposures as well as exposures to tobacco and tobacco products. These
27 cases have been deemed complex and are proceeding in Los Angeles County Superior Court as
28 Judicial Council Coordinated Proceeding No. 4182 (“JCCP 4182”). The Covered Property is among

1 the locations of alleged violations of Proposition 65 that are the subject of lawsuits brought by CAG
2 in JCCP 4182. The lawsuit alleges violations of both Proposition 65 and another case of action no
3 longer viable. The Court later dismissed Beverly Hills Hotel due to inadequate notice. The Court of
4 Appeal later deemed dismissal of Beverly Hills Hotel improper because the notice in the second wave
5 of cases (see paragraph 1.8 below) was valid as to occupational and environmental exposures.

6 1.8 Plaintiff's 60-Day Notice. More than sixty days before filing suit in this action, on
7 August 21, 1998, June 17, 1999, and again on April 5, 2002, Plaintiff or its predecessors served
8 Beverly Hills Hotel with Notices of Intent to Sue Under Health & Safety Code Sections 25249.6"
9 (the "Notices"). The Notices attached hereto as Exhibit A, stated, among other things, that Plaintiff
10 believed that Defendant had violated Proposition 65 by exposing, knowingly and intentionally,
11 consumers, customers, and employees of the Covered Property, as well as the public, to the
12 Proposition 65 listed chemicals found in tobacco products, tobacco smoke, and secondhand tobacco
13 smoke, (collectively "Noticed Chemicals"). This Consent Judgment covers only those specified
14 Noticed Chemicals.

15 1.9 Purpose of Consent Judgment. In order to avoid continued and protracted litigation,
16 CAG and Defendant wish to resolve certain tobacco exposure issues raised by the Notices and the
17 lawsuit, pursuant to the terms and conditions described here. In entering into this Consent Judgment,
18 both CAG and Defendant recognize that this Consent Judgment is a full and final settlement of all
19 claims related to tobacco products, tobacco smoke, and secondhand tobacco smoke (and its
20 constituent chemicals), that were raised or that could have been raised in the Notices and the CAG
21 Lawsuits. Plaintiff and Defendant also intend for this Consent Judgment to provide, to the maximum
22 extent permitted by law, *res judicata* protection for Defendant against all other claims based on the
23 same or similar allegations as to the Noticed Chemicals.

24 1.10 No Admission. Defendant disputes that it has violated Proposition 65 as described in
25 the Notices and the lawsuit. Plaintiff disputes the Defendant's defenses.

26 Based on the foregoing, nothing contained in this Consent Judgment shall be construed as an
27 admission by Plaintiff or Defendant that any action that Defendant may have taken, or failed to take,
28 violates Proposition 65 or any other statute, regulation, or principal of common law. Defendant

1 expressly denies any alleged violations of Proposition 65 or any other statute, regulation, or principle
2 of common law.

3 1.11 Effective Upon Final Determination. Defendant's willingness to enter into this
4 Consent Judgment is based upon the understanding that this Consent Judgment will fully and finally
5 resolve all claims related to tobacco products, tobacco smoke, and secondhand tobacco smoke (and
6 its constituent chemicals), and that this Consent Judgment will have *res judicata* effect to the extent
7 allowed by law with regards to Proposition 65 allegations.

8 2. JURISDICTION

9 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only, Plaintiff and
10 Defendant stipulate that this Court has jurisdiction over the allegations of violations contained in the
11 lawsuit.

12 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, Plaintiff and
13 Defendant stipulate that this Court has personal jurisdiction over the Defendant as to the acts alleged
14 in the lawsuit.

15 2.3 Venue. Venue is proper in the County of Los Angeles for resolution of the allegations
16 made in the lawsuit.

17 2.4 Jurisdiction to Enter Consent Judgment. This Court has jurisdiction to enter this
18 Consent Judgment as a full and final settlement and resolution of the allegations contained in the
19 Notices, the lawsuit, and of all claims that were or could have been raised based on the facts alleged
20 therein or arising therefrom.

21 3. INJUNCTIVE RELIEF:

22 CLEAR AND REASONABLE WARNINGS

23 3.1 Environmental and Occupational Exposure Warnings. With regard to the alleged
24 exposures to the Noticed Chemicals, Defendant either has posted and agrees to continue to maintain,
25 or will post within ninety days following the entry of Judgment a warning including substantially the
26 following language at the primary points of entry at the Covered Property and on the employees'
27 bulletin board or inside of the employees' handbook:
28

1 **WARNING:**

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

4 Defendant further agrees to post a warning with substantially the following language at every
5 location where smoking is permitted at the Covered Property, including either inside of any
6 guestroom that is designated for smokers or at the elevator landings on each floor with designated
7 smoking rooms:

8 **WARNING:**

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

11 Each of the warning signs in this Section 3.1 shall conform with the regulations for alcoholic
12 beverage warning signs in terms of size and print (Cal. Code Regs., tit. 22, § 12601, subd. (b)(1)(D))
13 and shall be located where they can be seen easily. The provision of said warnings shall be deemed
14 to satisfy all obligations under Proposition 65 by all person(s) or entity(ies) with respect to all
15 environmental and occupational exposures to Noticed Chemicals. The warnings described in this
16 Section 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 provided to guests,
18 employees, and to the public.

19 3.2 Consumer Product Warning. Defendant agrees to itself or where and if applicable take
20 reasonable steps to require that its gift shop operators/lessees post a warning at the Covered Property,
21 where cigars, cigarettes, or other tobacco products are sold. For the Covered Property, the following
22 warning shall be prominently displayed at or near the point of sale of such products:

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24
25 **WARNING:**

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

1 Defendant agrees to take reasonable steps to require that the warnings set forth in this section
2 3.2 be displayed at the retail outlet with such conspicuousness, as compared with other words,
3 statements, designs, or devices as to render the warnings likely to be read and understood by an
4 ordinary individual under customary conditions of purchase or use, consistent with California Code
5 of Regulations, title 22, section 12601, subdivision (b)(3).

6 3.3 Compliance. Defendant's compliance with paragraphs 3.1 and 3.2 is deemed to
7 satisfy fully Defendant's obligations under Proposition 65 with respect to any exposures and potential
8 exposures to Noticed Chemicals in all respects and to all person(s) and entity(ies). Defendant's
9 compliance with paragraphs 3.1 and 3.2 will not relieve it of any obligation to continue to provide the
10 statutorily approved warnings for alcohol.

11 3.4 Future Laws or Regulations. In lieu of complying with the requirements of paragraphs
12 3.1 and 3.2, if: (a) any future federal law or regulation that governs the warning provided for here
13 preempts state authority with respect to said warning; or (b) any future warning requirements with
14 respect to the subject matter of said paragraphs is proposed by any industry association and approved
15 by the State of California, or (c) any future new state law or regulation specifying a specific warning
16 for hotels with respect to the subject matter of said paragraphs, Defendant may comply with the
17 warning obligations set forth in paragraphs 3.1 and 3.2 of this Judgment by complying with such
18 future federal or state law or regulation or such future warning requirement upon notice to Plaintiff.

19 3.5 Statutory Amendment to Proposition 65. If there is a statutory or other amendment to
20 Proposition 65, or regulations are adopted pursuant to Proposition 65, which would exempt
21 paragraphs 3.1 and 3.2 of this Judgment Defendant, the "Released Parties," as defined at paragraph
22 4.2 below, or the class to which Defendant belongs, from providing the warnings described here,
23 then, upon the adoption of such statutory amendment or regulation, and to the extent provided for in
24 such statutory amendment or regulation, Defendant shall be relieved from its obligation to provide
25 the warnings set forth here. In the event the current owners or operators cease to own or operate the
26 Covered Property, the obligations under paragraphs 3.1 and 3.2 of this Judgment shall not apply to
27 them.
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4. RELEASE AND CLAIMS COVERED

4.1 Effect of Judgment. The Judgment is a full and final judgment with respect to any claims regarding the Noticed Chemicals asserted in the lawsuit against the Released Parties and each of them, and the Notice against Defendant regarding the Covered Property, including, but not limited to: (a) claims for any violations of Proposition 65 by the Released Parties as defined in paragraph 4.2 and each of them including, but not limited to, claims arising from consumer product, environmental, and occupational exposures to the Noticed Chemicals, wherever occurring and to whomever occurring, through and including the date upon which the Judgment becomes final; and (b) the Released Parties' continuing responsibility to provide the warnings mandated by Proposition 65 with respect to the Noticed Chemicals.

4.2 Release. Except for such rights and obligations as have been created under this Consent Judgment, Plaintiff, on its own behalf and bringing an action "in the public interest" pursuant to Health and Safety Code section 25249.7, subd. (d), with respect to the matters regarding the Noticed Chemicals alleged in the lawsuit, does hereby fully, completely, finally and forever release, relinquish and discharge: (a) The Beverly Hills Hotel, Beverly Hills Hotel Corporation, and Sajahtera, Inc., (b) the past, present, and future owners, lessors, sublessors, managers and operators of, and any others with any interest in, the Covered Property, and (c) the respective past, present, and future officers, directors, shareholders, affiliates, agents, principals, employees, attorneys, parents, subsidiaries, owners, sisters or other related entities, and successors and assigns of the persons and entities described in (a) and (b) immediately above (collectively (a), (b), and (c) are the "Released Parties") of and from all claims, actions, causes of action, demands, rights, debts, agreements, promises, liabilities, damages, accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of every nature whatsoever that Plaintiff has or may have against the Released Parties, arising directly or indirectly out of any fact or circumstance occurring prior to the date upon which the Judgment becomes final, relating to alleged violations of Proposition 65 or any other violation by the Defendants and their respective agents, servants and employees, being hereinafter referred to as the "Released Claims." The Released Claims include all allegations made,

1 or that could have been made, by Plaintiff with respect to the Noticed Chemicals relating to
2 Proposition 65 or otherwise.

3 4.3 Intent of Parties. The Parties intend that this release, upon entry of judgment and
4 conclusion of litigation relating to (i) this Consent Judgment itself, and (ii) the lawsuit itself as to The
5 Beverly Hills Hotel, Beverly Hills Hotel Corporation, and Sajahtera, Inc., that this Consent Judgment
6 shall be effective as a full and final accord and satisfaction and release of each Released Claim. In
7 furtherance of this intention, Plaintiff acknowledges that it is familiar with California Civil Code
8 section 1542, which provides as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
11 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
12 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
13 SETTLEMENT WITH THE DEBTOR.

14 Plaintiff waives and relinquishes all of the rights and benefits that Plaintiff has, or may have,
15 under Civil Code section 1542 (as well as any similar rights and benefits which it may have by virtue
16 of any statute or rule of law in any other state or territory of the United States). Plaintiff
17 acknowledges that it may hereafter discover facts in addition to, or different from, those which it now
18 knows or believes to be true with respect to the subject matter of this Consent Judgment and the
19 Released Claims, but that notwithstanding the foregoing, it is Plaintiff's intention to fully, finally,
20 completely and forever settle and release all Released Claims, and that in furtherance of such
21 intention, the release here given shall be and remain in effect as a full and complete general release,
22 notwithstanding the discovery or existence of any such additional or different facts.

23 4.4 Plaintiff's Ability to Represent Public. Plaintiff hereby warrants and represents to
24 Defendant and the Released Parties that (a) Plaintiff has not previously assigned any Released Claim,
25 and (b) Plaintiff has the right, ability and power to release each Released Claim.

26 4.5 No Further Force and Effect. Plaintiff and Defendant hereby request that this Court
27 enter judgment pursuant to this Consent Judgment. In connection therewith, Plaintiff and Defendant
28 waive their right, if any, to a hearing with respect to the entry of said judgment. In the event that:

(i) this Court denies the motion to approve the Consent Judgment pursuant to Health and
Safety Code section 25249.7 (f) (4) as amended;

1 (ii) a decision by this Court to approve the Consent Judgment is appealed and overturned by
2 another Court,; or

3 (iii) a third party files litigation to contest the validity of the Consent Judgment as against any
4 Plaintiff or Defendant relating to this Consent Judgment,

5 then upon notice by any party hereto to the other party hereto, this Consent Judgment shall
6 not be of any further force or effect and the parties shall be restored to their respective rights and
7 obligations as though this Consent Judgment had not been executed by the parties.

8 5. ATTORNEY FEES AND COSTS

9 5.1 Payment to Yeroushalmi & Associates. In an effort to defray CAG's expert fees and
10 costs, costs of investigation, attorney fees, or other costs incurred relating to this matter, Defendant
11 shall pay to the firm of Yeroushalmi & Associates the sum of \$35,000.00. This amount shall be paid
12 within ten days following the entry of a final judgment approving this Consent Judgment.

13 6. PRECLUSIVE EFFECT OF CONSENT JUDGMENT

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

16 (i) Constitutes full and fair adjudication of all claims against Defendant,
17 including, but not limited to, all claims set forth in the lawsuit, based upon alleged violations of
18 Proposition 65, as well as any other statute, provision of common law or any theory or issue which
19 arose from the alleged failure to provide warning of exposure to tobacco products, tobacco smoke,
20 and secondhand tobacco smoke (and its constituent chemicals), which may be present on the Covered
21 Property and which are known to the State of California to cause cancer, birth defects, and/or other
22 reproductive harm;

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

1 Covered Property and referred to in paragraph 1.3 and which are known to the State of California to
2 cause cancer, birth defects, and/or other reproductive harm.

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

4 7.1 Disputes. In the event that a dispute arises with respect to either party's compliance
5 with the terms of this Consent Judgment, the Parties shall meet, either in person or by telephone, and
6 endeavor to resolve the dispute in an amicable manner. No action may be taken to enforce the
7 provisions of the Judgment absent such a good faith effort to resolve the dispute prior to the taking of
8 such action. In the event that legal proceedings are initiated to enforce the provisions of the
9 Judgment, however, the prevailing party in such proceeding may seek to recover its costs and
10 reasonable attorney fees. As used in the preceding sentence, the term "prevailing party" means a
11 party who is successful in obtaining relief more favorable to it than the relief that the other party was
12 amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject
13 of such enforcement action.

14 **8. THIRD-PARTY LITIGATION**

15 8.1 Duty to Cooperate. In the event of any litigation, including but not limited to
16 opposition to entry of the Consent Judgment by this Court, instituted by a third party or governmental
17 entity or official, Plaintiff and Defendant agree to cooperate affirmatively in all efforts to defend
18 against any such litigation.

19 **9. NOTICES**

20 9.1 Written Notice Required. All notices between the parties provided for or permitted
21 under this Consent Judgment or by law shall be in writing and shall be deemed duly served:

- 22 (i) When personally delivered to a party, on the date of such delivery; or
- 23 (ii) When sent via facsimile to a party at the facsimile number set forth below, or
24 to such other or further facsimile number provided in a notice sent under the terms of this paragraph,
25 on the date of the transmission of that facsimile; or
- 26 (iii) When deposited in the United States mail, certified, postage prepaid, addressed
27 to such party at the address set forth below, or to such other or further address provided in a notice
28 sent under the terms of this paragraph, three days following the deposit of such notice in the mails.

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

3 (a) If to Plaintiff:

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

9 (b) If to Defendant:

10 Jeffrey S. Gordon, Esq.
11 Kaye Scholer LLP
12 1999 Avenue of the Stars
13 16th Floor
14 Los Angeles, CA 90067
15 Facsimile Number: 310-788-1200

16 Copy to:
17 Janet Jacobs, Director of Finance
18 The Beverly Hills Hotel
19 9641 Sunset Blvd.
20 Beverly Hills, CA 90210

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

23 10. INTEGRATION

24 10.1 Integrated Writing. This Consent Judgment constitutes the final and complete
25 agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior or
26 contemporaneous negotiations, promises, covenants, agreements or representations concerning any
27 matters directly, indirectly or collaterally related to the subject matter of this Consent Judgment. The
28 Parties hereto have expressly and intentionally included in this Consent Judgment all collateral or
additional agreements that may, in any manner, touch or relate to any of the subject matter of this
Consent Judgment and, therefore, all promises, covenants and agreements, collateral or otherwise, are
included herein and therein. The parties intend that this Consent Judgment shall constitute an
integration of all their agreements, and each understands that in the event of any subsequent
litigation, controversy or dispute concerning any of its terms, conditions or provisions, no party

1 hereto shall be permitted to offer or introduce any oral or extrinsic evidence concerning any other
2 collateral or oral agreement between the parties not included herein.

3 **11. TIMING**

4 11.1 Time of Essence. Time is of the essence in the performance of the terms hereof.

5 **12. COMPLIANCE WITH REPORTING REQUIREMENTS**

6 12.1 Reporting Forms; Presentation to Attorney General. The parties agree to comply with
7 the reporting form requirements referenced in Health and Safety Code section 25249.7, subdivision
8 (f), whereby Plaintiff shall present this Consent Judgment to the California Attorney General's office
9 upon receiving all necessary signatures.

10 **13. COUNTERPARTS**

11 13.1 Counterparts. This Consent Judgment may be signed in counterparts and shall be
12 binding upon the parties hereto as if all of said parties executed the original hereof. A facsimile or
13 pdf signature shall be as valid as the original.

14 **14. WAIVER**

15 14.1 No Waiver. No waiver by any party hereto of any provision hereof shall be deemed to
16 be a waiver of any other provision hereof or of any subsequent breach of the same or any other
17 provision hereof.

18 **15. AMENDMENT**

19 15.1 In Writing. This Consent Judgment cannot be amended or modified except by a
20 writing executed by the parties hereto that expresses, by its terms, an intention to modify this Consent
21 Judgment.

22 **16. SUCCESSORS**

23 16.1 Binding upon Successors. This Consent Judgment shall be binding upon and inure to
24 the benefit of, and be enforceable by, the parties hereto and their respective administrators, trustees,
25 executors, personal representatives, successors and permitted assigns.

26 **17. CHOICE OF LAWS**

27 17.1 California Law Applies. Any dispute regarding the interpretation of this Consent
28 Judgment, the performance of the parties pursuant to the terms of this Consent Judgment, or the

1 damages accruing to a party by reason of any breach of this Consent Judgment shall be determined
2 under the laws of the State of California, without reference to principles of choice of laws.

3 **18. NO ADMISSIONS**

4 18.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has been reached by
5 the parties to avoid the costs of prolonged litigation. By entering into this Consent Judgment, neither
6 Plaintiff nor Defendant admits any issue of fact or law, including any violations of Proposition 65 or
7 any other law. The settlement of claims herein shall not be deemed to be an admission or concession
8 of liability or culpability by any party, at any time, for any purpose. Neither this Consent Judgment,
9 nor any document referred to herein, nor any action taken to carry out this Consent Judgment, shall
10 be construed as giving rise to any presumption or inference of admission or concession by Defendant
11 as to any fault, wrongdoing or liability whatsoever. Neither this Consent Judgment, nor any of its
12 terms or provisions, nor any of the negotiations or other proceedings connected with it, nor any other
13 action taken to carry out this Consent Judgment, by any of the parties hereto, shall be referred to,
14 offered as evidence, or received in evidence in any pending or future civil, criminal or administrative
15 action or proceeding, except in a proceeding to enforce this Consent Judgment, to defend against the
16 assertion of the Released Claims or as otherwise required by law.

17 **19. REPRESENTATION**

18 19.1 Construction of Consent Judgment. Plaintiff and Defendant each acknowledge and
19 warrant that they have been represented by independent counsel of their own selection in connection
20 with the prosecution and defense of the Lawsuits, the negotiations leading to this Consent Judgment
21 and the drafting of this Consent Judgment; and that in interpreting this Consent Judgment, the terms
22 of this Consent Judgment will not be construed either in favor of or against any party hereto.

23 **20. AUTHORIZATION**

24 20.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies that he
25 or she is authorized by the party he or she represents to enter into this Consent Judgment, to stipulate
26 to the Judgment, and to execute and approve the Judgment on behalf of the party represented.

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september
Dated: ~~July~~ 19, 2008

CONSUMER ADVOCACY GROUP, INC.

By *Jim Marcus, Pres.*
Consumer Advocacy Group, Inc.

Dated: July _____, 2008

BEVERLY HILLS HOTEL CORPORATION

By _____

Dated: July _____, 2008

SAJAHTERA, INC.

By _____

Approved as to form:

september
Dated: ~~July~~ 19, 2008

YEROUSHALMI & ASSOCIATES

By *[Signature]*
Reuben Yeroushalmi
Attorneys for Consumer Advocacy
Group, Inc.

KAYE SCHOLER LLP

Dated: July _____, 2008

By _____
Jeffrey S. Gordon, Esq.
Attorneys for Beverly Hills Hotel Corporation
and Sajahtera, Inc.

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Dated: July _____, 2008

CONSUMER ADVOCACY GROUP, INC.

By _____
Consumer Advocacy Group, Inc.

Dated: ~~July~~ Aug 29, 2008

BEVERLY HILLS HOTEL CORPORATION

By Janet Jacobs

Dated: ~~July~~ Aug 29, 2008

SAJAHTERA, INC.

By Janet Jacobs

Approved as to form:

Dated: July _____, 2008

YEROUSHALMI & ASSOCIATES

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

KAYE SCHOLER LLP

September 2
Dated: ~~July~~ _____, 2008

By [Signature]
Jeffrey S. Gordon, Esq.
Attorneys for Beverly Hills Hotel Corporation
and Sajahtera, Inc.

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REVIEWED AND APPROVED AS A JUDGMENT OF THE SUPERIOR COURT.
IT IS SO ORDERED.

Dated: _____, 2008

THE HONORABLE WILLIAM HIGHBERGER
JUDGE OF THE SUPERIOR COURT

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EXHIBIT A
60-Day Notices

**60-Day Notice for Failure to Warn Public About Chemicals Listed Under Health & Safety
Code Section 25249.6**

This notice is given by:

- (a) **Consumer Advocacy Group**, 506 N La Cienega Blvd. Los Angeles CA and by
(b) **Consumer Cause, Inc.**; P.O. Box 252143 Los Angeles CA 90025.

The noticing parties must be contacted through the following responsible party: Morsé Mehrban, Esq.; 3700 Wilshire Blvd Ste 480 Los Angeles CA 90010; 213-382-3183. This letter constitutes notification that **The Beverly Hills Hotel** (hereinafter, "the violator") has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5).

Consumer Product Exposures

While in the course of doing business, since **08/21/94** and to this date, the violator has been and is knowingly and intentionally exposing consumers and the public to tobacco smoke and cigars which contain, and the consumption of which exposes said persons to, chemicals designated by the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning of that fact to such persons (Health & Safety Code Section 25249.6).

Occupational Exposures

While in the course of doing business, since **08/21/94** and to this date, the violator has been and is knowingly and intentionally exposing employees of the violator, in **Beverly Hills, California**, to tobacco smoke which contains chemicals designated by the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning of that fact to such persons (Health & Safety Code Section 25249.6). Employees include and are not limited to bartenders, cashiers, waiters, waitresses, cooks, security personnel, maintenance workers and entertainment providers.

Environmental Exposures

While in the course of doing business, since **8/21/94** and to this date, the violator has been and is knowingly and intentionally exposing the public to certain chemicals designated by the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 25249.6). The source of exposure is tobacco smoke and cigars. These exposures occurred on and beyond property owned and controlled by the violator.

The route of exposure to these chemicals has been inhalation, ingestion and dermal contact. The violator exposed and is exposing the above-referenced persons to the following chemicals:

Tobacco smoke
Acetaldehyde
Acetamide

FILE

Acrolein
Acrylonitrile
4-Aminobiphenyl
Aniline
o-Anisidine
Benz[a]anthracene
Benzene
Benzo[b]fluoranthene
Benzo[j]fluoranthene
Benzo[k]fluoranthene
Benzo[a]pyrene
1,3-Butadiene
Captan
Carbon disulfide
Carbon monoxide
Chrysene
DDT
Dibenz[a,h]acridine
Dibenz[a,j]acridine
Dibenz[a,h]anthracene
7H-Dibenzo[c,g]carbazole
Dibenzo[a,e]pyrene
Dibenzo[a,h]pyrene
Dibenzo[a,i]pyrene
Dibenzo[a,l]pyrene
1,1-Dimethylhydrazine
1-Naphthylamine
2-Naphthylamine
Nicotine
2-Nitropropane
N-Nitrosodi-n-butylamine
N-Nitrosodiethanolamine
N-Nitrosodiethylamine
N-Nitroso-n-methylethylamine
N'-Nitrosonornicotine
N-Nitrosopiperidine
N-Nitrosopyrrolidine
Styrene
Toluene
2-Toluidine
Urethane
Vinyl chloride
Arsenic
Cadmium
Chromium
Lead
Nickel

Proposition 65 requires that notice and intent to sue be given to the violator 60 days before the suit is filed. With this letter, **Consumer Advocacy Group** and **Consumer Cause, Inc.** give notice of the alleged violation to the violator and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to **Consumer Advocacy Group** and **Consumer Cause, Inc.** from information now available to them. With the copy of this notice submitted to the violator, a copy is provided of *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary*.

Dated: August 21, 1998

LAW OFFICES OF MORSÉ MEHRBAN

By:


Morsé Mehrban, Esq.

Attorney for Consumer Advocacy Group and Consumer Cause, Inc.

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 Blvd., Suite 480, Los Angeles, CA 90010.

I SERVED THE FOLLOWING:

1.) 60-Day Notice for Failure to Warn Public About Chemicals Listed Under Health & Safety Code Section 25249.6

2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (only sent to violators)

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.

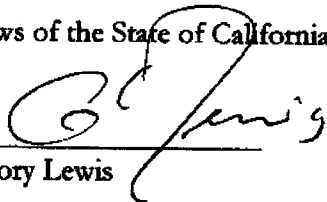
Date of Mailing: 8-21-98
Place of Mailing: Los Angeles, CA

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

Please see attached list

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

Dated: 8-21-98



Gregory Lewis

California Attorney General
1515 K St Ste 600
Sacramento CA 95814

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

Los Angeles County District Attorney
210 W Temple St, 18th Floor
Los Angeles, CA 90012

The Beverly Hills Hotel
9641 Sunset Boulevard
Beverly Hills, CA 90210

Aziz Bin Abd Rahman
Beverly Hills Hotel Corporation
C/O Kaye, Scholer, Fierman et al
1999 Ave of the Stars #1600
Los Angeles, CA 90067

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 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 550 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.

Discharges 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 listed 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 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)].

First Amended 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6

This notice is given by **Consumer Cause, Inc.**, PO Box 252143, Los Angeles, CA 90025. The noticing party must be contacted through the following entity: **Morsé Mehrban, Esq.; MEHRBAN & GHALCHI** 3700 Wilshire Blvd., Suite 480, Los Angeles CA 90010; 213-382-3183. This letter constitutes notification that **Beverly Hills Hotel** (hereinafter, "the violator") has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5).

Consumer Product Exposures

While in the course of doing business, from 8/21/94 through 6/7/99, the violator has been and is knowingly and intentionally selling cigars at:

9641 Sunset Blvd., Beverly Hills, CA 90210

and exposing consumers and the public to **tobacco smoke** and other chemicals designated by the State of California to cause **cancer and reproductive toxicity** without first giving clear and reasonable warning of that fact to such persons (Health & Safety Code Section 25249.6). The sources of exposures are **cigars**. A "consumer product exposure" is an exposure which results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service. Cigars are consumer products. The sale, purchase, consumption and the reasonably foreseeable use of cigars result in exposures through inhalation, ingestion, and dermal contact to the chemicals listed below. Purchasers of the violator's cigars lit them, smoked them, and inhaled the chemicals listed below.

Environmental Exposures

While in the course of doing business, at:

9641 Sunset Blvd., Beverly Hills, CA 90210

from 8/21/94 through 6/7/99, the violator has been and is knowingly and intentionally exposing its customers and the public to **tobacco and tobacco smoke** and other chemicals listed below and designated by the State of California to cause **cancer and reproductive toxicity** without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 25249.6). The locations of the exposures are the lobbies, smoking rooms and guest rooms designated for smoking at:

9641 Sunset Blvd., Beverly Hills, CA 90210

Occupational Exposures

While in the course of doing business, from 8/21/94 through 6/7/99, the violator has been and is knowingly and intentionally exposing employees of the violator in the lobbies, smoking rooms, and guest rooms designated for smoking at:

9641 Sunset Blvd., Beverly Hills, CA 90210

Employees include but are not limited to bartenders, cashiers, maids, waiters, security personnel,

maintenance workers, service personnel, and entertainment providers.

The route of exposure for Consumer Product Exposures, Occupational Exposures and Environmental Exposures to the chemicals listed below has been inhalation, ingestion and dermal contact. For each such type and means of exposure, the violator has exposed and is exposing the above referenced persons to:

CARCINOGENS

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

REPRODUCTIVE TOXINS

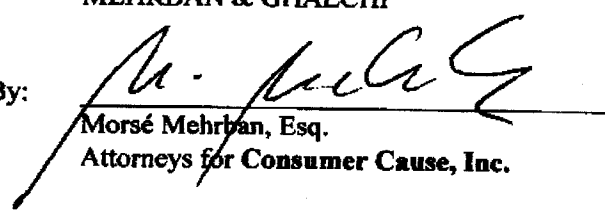
Arsenic (inorganic Oxides)	Cadmium
Carbon disulfide	Carbon monoxide
Lead	Nicotine
Toluene	Tobacco Smoke
Urethane	

Proposition 65 requires that notice and intent to sue be given to the violators 60 days before the suit is filed. With this letter, **Consumer Cause, Inc.** gives notice of the alleged violations to the violator and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to **Consumer Cause, Inc.** from information now available to it. With the copy of this notice submitted to the violator, a copy is provided of *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.*

Dated: June 7, 1999

MEHRBAN & GHALCHI

By:

A handwritten signature in black ink, appearing to read 'M. Mehrban', is written over a horizontal line. The signature is slanted and somewhat stylized.

Morsé Mehrban, Esq.
Attorneys for Consumer Cause, Inc.

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 Blvd., Suite 480, Los Angeles, CA 90010. I served the following:

- 1.) First Amended 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
(only sent to violators)

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: June 7, 1999

Place of Mailing: Los Angeles, CA

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

Aziz Bin Abd Rahman
Beverly Hills Hotel Corporation
C/O Kaye, Scholer, Fierman et al.
1999 Ave. of the Stars, No. 1600
Los Angeles, CA 90067

Aziz Bin Abd Rahman
Beverly Hills Hotel
9641 Sunset Blvd.
Beverly Hills, CA 90210

California Attorney General
PO Box 944255
Sacramento CA 94244-2550

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

Los Angeles County District Attorney
210 W. Temple St., 18th Floor
Los Angeles, CA 90012

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

Dated: June 7, 1999


Morsé Mehrban

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 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 550 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.

Discharges 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 listed 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 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)).

VIA U.S. MAIL

Beverly Hills Hotel Corporation
1999 Ave of the Stars, No. 1600
Los Angeles, CA 90067
ATTN: Aziz Bin Abd Rahman
C/O Kaye, Scholer, Fierman et al

Beverly Hills Hotel
9641 Sunset Blvd.
Beverly Hills, CA 90210
ATTN: Aziz Bin Abd Rahman

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:*

***Beverly Hills Hotel
Beverly Hills Hotel Corporation***

	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 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)	Benzo[a]anthracene	Dibenz[a,j]acridine	N-Nitrosodi-n-butylamine
1,3-Butadiene	Benzene	Dibenzo[a,e]pyrene	N-Nitrosomethylethylamine
1-Naphthylamine	Benzo[a]pyrene	Dibenzo[a,h]pyrene	N-Nitrosomorpholine
2-Naphthylamine	Benzo[b]fluoranthene	Dibenzo[a,i]pyrene	N-Nitrososonicotine
2-Nitropropane	Benzo[<i>l</i>]fluoranthene	Dibenzo[a,l]pyrene	N-Nitrosopiperidine
4-Aminobiphenyl	Benzo[k]fluoranthene	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-Nitrosodiethanolamine	

REPRODUCTIVE TOXINS

Arsenic (inorganic Oxides)	Carbon monoxide	Nicotine	Urethane
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 YERUSHALMI
 Attorney for
Consumer Advocacy Group, Inc.

EXHIBIT A

THE LOCATION OF THE SOURCE OF THE EXPOSURE

9641 Sunset Blvd., Beverly Hills, CA 90210

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE 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 550 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 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 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: _____ Place of Mailing: Los Angeles, CA

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

Beverly Hills Hotel Corporation
 1999 Ave of the Stars, No. 1600
 Los Angeles, CA 90067
 ATTN: Aziz Bin Abd Rahman
 C/O Kaye, Scholer, Fierman et al

Alleged Violators

Beverly Hills Hotel
 9641 Sunset Blvd
 Beverly Hills, CA 90210
 ATTN: Aziz Bin Abd Rahman

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

Government Agencies

Los Angeles County District Attorney
 210 W Temple St, 18th Floor
 Los Angeles, CA 90012

Office of the Attorney General
 P.O. BOX 70550
 Oakland, CA 94612-0550

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

Dated: _____

By: _____
Brian Keith Andrews