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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF LOS ANGELES

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

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

23 SECONDHAND SMOKE CASES

[PROPOSED] STIPULATED CONSENT
JUDGMENT

24 This Document Relates to the following cases:

25 *Consumer Advocacy Group, Inc. v. Destination*
26 *Hotels & Resorts, et al.*
27 Former Los Angeles County Superior Court
28 Case No. BC234630; and

Consumer Advocacy Group, Inc. v. Hilton
Corporation, et al.
Former Los Angeles County Superior Court
Case No. BC276355.

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 Defendants. Pacifica Hosts, Inc., sued erroneously as Pacifica Host, Inc. (“Pacifica
2 Host” or “Defendant”), is the hotel management arm of Pacifica Companies. Pacifica Host currently
3 manages properties located across the United States in various locations in Arizona, California,
4 Florida, Utah and New York. Pacifica Host manages brands such as Marriott, Hampton Inn,
5 Doubletree, Best Western, Clarion, Courtyard by Marriott, Days Inn Suites, Holiday Inn, Holiday Inn
6 Express, Radisson and Wyndham.

7 1.3 Covered Properties. The properties owned or managed by Pacifica Host are the
8 “Covered Properties,” as identified in Exhibit A to this Consent Judgment.

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

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

18 1.6 First Wave of Proposition 65 Cases. Before suing under Proposition 65, a plaintiff
19 must first give the defendant a 60-day notice of the violations. Since approximately 1998, CAG has
20 sent 60-day notices to a number of industries, including the hotel industry, throughout the State
21 alleging violations of Proposition 65. The notices to the hotel industry alleged exposures to
22 consumers, customers, guests, employees, and members of the public to tobacco and/or tobacco
23 products and/or secondhand tobacco smoke. In 1999, a trial court in Los Angeles County Superior
24 Court ruled that the 60-day notices in these cases were inadequate and dismissed the cases. The
25 California Court of Appeal upheld the lower court’s ruling on appeal. This first wave of notices did
26 not include notice to Pacific Host.

27 1.7 Judicial Council Coordinated Proceedings. The second wave of cases, based on new 60-day
28 notices, include claims against hotels, gas stations, mini marts, and drugstores, among others, and

1 allege secondhand smoke exposures as well as exposures to tobacco and tobacco products. These
2 cases have been deemed complex and are proceeding in Los Angeles County Superior Court as
3 Judicial Council Coordinated Proceeding No. 4182 (“JCCP 4182”). Most, if not all, of Pacifica
4 Host’s Covered Properties are the subject of lawsuits brought by CAG in JCCP 4182. The lawsuit
5 alleges violations of both Proposition 65 and another case of action no longer viable. The Court later
6 dismissed Pacifica Host due to inadequate notice. The Court of Appeal later deemed dismissal of
7 Pacifica Host improper because the second notice (see paragraph 1.8 below) was valid as to
8 occupational and environmental exposures.

9 1.8 Plaintiff’s 60-Day Notice. More than sixty days before filing suit in this action, on
10 August 16, 2001, and again on April 5, 2002, Plaintiff served Pacifica Host Notices of Intent to Sue
11 Under Health & Safety Code Sections 25249.6” (the “Notices”). The Notices attached hereto as
12 Exhibit B, stated, among other things, that Plaintiff believed that Defendant had violated Proposition
13 65 by exposing, knowingly and intentionally, consumers, customers, and employees of the Covered
14 Properties, as well as the public, to the Proposition 65 listed chemicals found in secondhand tobacco
15 smoke, (collectively “Noticed Chemicals”). This Consent Judgment covers only those specified
16 Noticed Chemicals.

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

26 1.10 No Admission. Defendant disputes that it has violated Proposition 65 as described in
27 the Notices and the lawsuit. In particular, Defendant contends that no warning is required for the
28 exposures Plaintiff alleges. Plaintiff disputes the Defendant’s defenses.

1 Based on the foregoing, nothing contained in this Consent Judgment shall be construed as an
2 admission by Plaintiff or Defendant that any action that Defendant may have taken, or failed to take,
3 violates Proposition 65 or any other statute, regulation, or principle of common law. Defendant
4 expressly denies any alleged violations of Proposition 65 or any other statute, regulation, or principle
5 of common law.

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

11 2. JURISDICTION

12 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only, Plaintiff and
13 Defendant stipulate that this Court has jurisdiction over the allegations of violations contained in the
14 lawsuit.

15 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, Plaintiff and
16 Defendant stipulate that this Court has personal jurisdiction over the Defendant as to the acts alleged
17 in the lawsuit.

18 2.3 Venue. Venue is proper in the County of Los Angeles for resolution of the allegations
19 made in the lawsuit.

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

24 3. INJUNCTIVE RELIEF:

25 CLEAR AND REASONABLE WARNINGS

26 3.1 Environmental and Occupational Exposure Warnings. With regard to the alleged
27 exposures to the Noticed Chemicals, Defendant will post within ninety days following the entry of
28 Judgment, a warning including substantially the following language at the primary points of entry at

1 each of the Covered Properties under Defendant's control and on the employees' bulletin board or
2 inside of the employees' handbook:

3 **WARNING:**

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

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

10 **WARNING:**

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

13 Each of the warning signs in this Section 3.1 shall conform with the regulations for alcoholic
14 beverage warning signs in terms of size and print (Cal. Code Regs., tit. 22, § 12601, subd. (b)(1)(D))
15 and shall be located where they can be seen easily. The provision of said warnings shall be deemed
16 to satisfy all obligations under Proposition 65 by all person(s) or entity(ies) with respect to all
17 environmental and occupational exposures to Noticed Chemicals. The warnings described in this
18 Section 3.1 may be combined with other information on a single sign and may be provided by the
19 same media and in the same or similar format in which other hotel information is provided to guests,
20 employees, and to the public.

21 3.2 Compliance. Defendant's compliance with paragraph 3.1 is deemed to satisfy fully
22 Defendant's obligations under Proposition 65 with respect to any exposures and potential exposures
23 to Noticed Chemicals in all respects and to all person(s) and entity(ies). Defendant's compliance
24 with paragraph 3.1 will not relieve it of any obligation to continue to provide the statutorily approved
25 warnings for alcohol.

26 3.3 Future Laws or Regulations. In lieu of complying with the requirements of paragraph
27 3.1, if: (a) any future federal law or regulation that governs the warning provided for here preempts
28 state authority with respect to said warning; or (b) any future warning requirements with respect to

1 the subject matter of said paragraphs is proposed by any industry association and approved by the
2 State of California, or (c) any future new state law or regulation specifying a specific warning for
3 hotels with respect to the subject matter of said paragraphs, Defendant may comply with the warning
4 obligations set forth in paragraph 3.1 of this Judgment by complying with such future federal or state
5 law or regulation or such future warning requirement upon notice to Plaintiff.

6 3.4 Statutory Amendment to Proposition 65. If there is a statutory or other amendment to
7 Proposition 65, or regulations are adopted pursuant to Proposition 65, which would exempt
8 Defendant, the "Released Parties," as defined at paragraph 4.2 below, or the class to which Defendant
9 belongs, from providing the warnings described here, then, upon the adoption of such statutory
10 amendment or regulation, and to the extent provided for in such statutory amendment or regulation,
11 Defendant shall be relieved from its obligation to provide the warnings set forth here.

12 **4. RELEASE AND CLAIMS COVERED**

13 4.1 Effect of Judgment. The Judgment is a full and final judgment with respect to any
14 claims regarding the Noticed Chemicals asserted in the lawsuit against the Released Parties and each
15 of them, and the Notice against Defendant regarding the Covered Properties, including, but not
16 limited to: (a) claims for any violations of Proposition 65 by the Released Parties as defined in
17 paragraph 4.2 and each of them including, but not limited to, claims arising from environmental and
18 occupational exposures to the Noticed Chemicals, wherever occurring and to whomever occurring,
19 through and including the date upon which the Judgment becomes final, including all appeals; and (b)
20 the Released Parties' continuing responsibility to provide the warnings mandated by Proposition 65
21 with respect to the Noticed Chemicals.

22 4.2 Release. Except for such rights and obligations as have been created under this
23 Consent Judgment, Plaintiff, on its own behalf and bringing an action "in the public interest"
24 pursuant to Health and Safety Code section 25249.7, subd. (d), with respect to the matters regarding
25 the Noticed Chemicals alleged in the lawsuit, does hereby fully, completely, finally and forever
26 release, relinquish and discharge: (a) Pacifica Hosts, Inc., (b) the past, present, and future owners,
27 lessors, sublessors, managers and operators of, and any others with any interest in, the Covered
28 Properties, and (c) the respective officers, directors, shareholders, affiliates, agents, employees,

1 attorneys, successors and assigns of the persons and entities described in (a) and (b) immediately
2 above (collectively (a), (b), and (c) are the "Released Parties") of and from all claims, actions, causes
3 of action, demands, rights, debts, agreements, promises, liabilities, damages, accountings, costs and
4 expenses, whether known or unknown, suspected or unsuspected, of every nature whatsoever that
5 Plaintiff has or may have against the Released Parties, arising directly or indirectly out of any fact or
6 circumstance occurring prior to the date upon which the Judgment becomes final, including all
7 appeals, relating to alleged violations of Proposition 65 by the Defendants and their respective agents,
8 servants and employees, being hereinafter referred to as the "Released Claims." In sum, the Released
9 Claims include all allegations made, or that could have been made, by Plaintiff with respect to the
10 Noticed Chemicals relating to Proposition 65.

11 4.3 Intent of Parties. The Parties intend that this release, upon entry of judgment and
12 conclusion of any appeals or litigation relating to (i) this Consent Judgment itself, and (ii) the lawsuit
13 itself, that this Consent Judgment shall be effective as a full and final accord and satisfaction and
14 release of each Released Claim. In furtherance of this intention, Plaintiff acknowledges that it is
15 familiar with California Civil Code section 1542, which provides as follows:

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

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

1 4.4 Plaintiff's Ability to Represent Public. Plaintiff hereby warrants and represents to
2 Defendant and the Released Parties that (a) Plaintiff has not previously assigned any Released Claim,
3 and (b) Plaintiff has the right, ability and power to release each Released Claim.

4 4.5 No Further Force and Effect. Plaintiff and Defendant hereby request that this Court
5 enter judgment pursuant to this Consent Judgment. In connection therewith, Plaintiff and Defendant
6 waive their right, if any, to a hearing with respect to the entry of said judgment. In the event that (i)
7 this Court denies the joint motion to approve the Consent Judgment brought by Plaintiff and
8 Defendant pursuant to Health and Safety Code section 25249.7, as amended, or (ii) a decision by this
9 Court to approve the Consent Judgment is appealed and overturned in the California Court of Appeal
10 or the California Supreme Court, this Consent Judgment shall not be of any further force or effect and
11 the parties shall be restored to their respective rights and obligations as though this Consent Judgment
12 had not been executed by the parties.

13 5. ATTORNEY FEES AND COSTS

14 5.1 Payment to Yeroushalmi & Associates. In an effort to defray CAG's expert fees and
15 costs, costs of investigation, attorney fees, or other costs incurred relating to this matter, Defendant
16 shall pay to the firm of Yeroushalmi & Associates the sum of \$50,000.00. This amount shall be paid
17 within ten days following the entry of a final judgment, including all appeals, approving this Consent
18 Judgment.

19 6. PRECLUSIVE EFFECT OF CONSENT JUDGMENT

20 6.1 Entry of Judgment. Entry of judgment by the Court pursuant to this Consent
21 Judgment, *inter alia*:

22 (i) Constitutes full and fair adjudication of all claims against Defendant,
23 including, but not limited to, all claims set forth in the lawsuit, based upon alleged violations of
24 Proposition 65, as well as any other statute, provision of common law or any theory or issue which
25 arose from the alleged failure to provide warning of exposure to secondhand tobacco smoke (and its
26 constituent chemicals), which may be present on the Covered Properties identified in Exhibit A and
27 referred to in paragraph 1.3 and which are known to the State of California to cause cancer, birth
28 defects, and/or other reproductive harm;

1 (ii) Bars all other persons, on the basis of *res judicata* and the doctrine of mootness
2 and/or the doctrine of collateral estoppel, from prosecuting against any Released Party any claim with
3 respect to the Noticed Chemicals alleged in the CAG Lawsuits, and based upon alleged violations of
4 (a) Proposition 65, or (b) any other statute, provision of common law or any theory or issue which
5 arose or arises from the alleged failure to provide warning of exposure to secondhand tobacco smoke
6 (and its constituent chemicals), which may be present on the Covered Properties identified in Exhibit
7 A and referred to in paragraph 1.3 and which are known to the State of California to cause cancer,
8 birth defects, and/or other reproductive harm.

9 7. DISPUTES UNDER THE CONSENT JUDGMENT

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

20 8. THIRD-PARTY LITIGATION

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

25 9. NOTICES

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

28 (i) When personally delivered to a party, on the date of such delivery; or

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

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

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

8 (a) If to Plaintiff:

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

14 (b) If to Defendant:

15 Thomas P. Sayer, Jr., Esq.
16 9974 Scripps Ranch Boulevard
17 Suite 284
18 San Diego, CA 92131
19 Facsimile Number: 858-348-2348

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

22 10. INTEGRATION

23 10.1 Integrated Writing. This Consent Judgment constitutes the final and complete
24 agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior or
25 contemporaneous negotiations, promises, covenants, agreements or representations concerning any
26 matters directly, indirectly or collaterally related to the subject matter of this Consent Judgment. The
27 Parties hereto have expressly and intentionally included in this Consent Judgment all collateral or
28 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

1 litigation, controversy or dispute concerning any of its terms, conditions or provisions, no party
2 hereto shall be permitted to offer or introduce any oral or extrinsic evidence concerning any other
3 collateral or oral agreement between the parties not included herein.

4 **11. TIMING**

5 11.1 Time of Essence. Time is of the essence in the performance of the terms hereof.

6 **12. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

11 **13. COUNTERPARTS**

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

15 **14. WAIVER**

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

19 **15. AMENDMENT**

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

23 **16. SUCCESSORS**

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

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17. CHOICE OF LAWS

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

18. NO ADMISSIONS

18.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has been reached by the parties to avoid the costs of prolonged litigation. By entering into this Consent Judgment, neither Plaintiff nor Defendant admits any issue of fact or law, including any violations of Proposition 65 or any other law. 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 Defendant 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 proceeding to enforce this Consent Judgment, to defend against the assertion of the Released Claims or as otherwise required by law.

19. REPRESENTATION

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

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: ~~March~~ ^{SEP.} 5, 2008

CONSUMER ADVOCACY GROUP, INC.

By [Signature]
Consumer Advocacy Group, Inc.

Dated: March 20, 2008

PACIFICA HOSTS, INC.

By [Signature]
Sushil Israni, Vice President

Approved as to form:

Dated: ~~March~~ ^{SEP.} 5, 2008

YEROUSHALMI & ASSOCIATES

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

Dated: March 20, 2008

By [Signature]
Thomas P. Sayer, Jr., Esq.
Attorneys for Pacifica Hosts, Inc.

EXHIBIT A

List of Covered Properties

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Covered Properties

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Radisson Hotel at LAX Airport
6225 West Century Blvd.
Los Angeles, CA 90045

Best Western Catalina Canyon
888 Country Club Lane
Avalon, CA 90704

Days Inn/Suites
3350 Rosecrans St.
San Diego, CA 92110

Holiday Inn - Escondido
1250 West Valley Parkway
Escondido, CA 92025

Holiday Inn Express - La Jolla
6705 La Jolla Blvd
La Jolla, CA 92037

Holiday Inn Express - Chula Vista
4450 Main Street
Chula Vista, CA 91911

Seacoast Inn
800 Seacoast Drive
Imperial Beach, CA 91932

Best Western Stratford Inn
710 Camino Del Mar
Del Mar, CA 92014

Holiday Inn Express - Simi Valley
2550 Errenger Road
Simi Valley, CA 93065

Holiday Inn - Long Beach
1133 Atlantic Avenue
Long Beach, CA 90813

Pacific Shores Inn
4802 Mission Boulevard
San Diego, CA 92109

Diamond Head Inn
605 Diamond Street
San Diego, CA 92109

Clarion Hotel - Sacramento
700 16th Street
Sacramento, CA 95814

Holiday Inn Express - Sacramento
728 16th Street
Sacramento, CA 95814

Holiday Inn - National City
700 National City Blvd
San Diego, CA 91950

Courtyard by Marriott - Century City
10320 West Olympic Boulevard
Century City, CA 90064

Wyndham - San Jose
1350 North First Street
San Jose, CA 95112

Courtyard by Marriott - Madera
191 E. Cochran St.
Simi Valley, CA 93065

Radisson Hotel - Stockton
2323 Grand Canal Boulevard
Stockton, CA 95207

Holiday Inn Express - Monterey Bay
1400 Del Monte Boulevard
Seaside, CA 93955

EXHIBIT B
60-Day Notices

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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 Blvd., # 225 Beverly Hills CA 90212. The noticing party must be contacted through the following entity; Reuben Yeroushalmi Esq. and/or, Kamran Ghalchi Esq.; YERUSHALMI & GHALCHI 3700 Wilshire Blvd. Ste. 480 Los Angeles CA 90010; 213-382-3183. This letter constitutes notification that **Pacific Host Hotels** (hereinafter, "the violator") has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5).*

Environmental Exposures

While in the course of doing business, at:

The locations in the attached Exhibit A.

from 4/17/96 through 4/17/2000, the violator has been and is knowingly and intentionally exposing its customers and the public to **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 source of exposures is **tobacco smoke**. The locations of the exposures are inside limousines and cars the hotels provide as complimentary or charged, also the lobbies, corridors and hallways of floors where guest rooms designated for smokers are located, areas adjacent to pools and entrances, smoking rooms, and guest rooms designated for smoking at:

The locations in the attached Exhibit A.

Occupational Exposures

While in the course of doing business, from 4/17/96 through 4/17/2000, the violator has been and is knowingly and intentionally exposing employees of the violator 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 person (Health & Safety Code Section 25249.6). The source of exposure includes **tobacco and tobacco smoke** at the locations in **Exhibit A**. Employees include and are not limited to bartenders, cashiers, waiters, waitresses, cooks, security personnel, maintenance workers, service personnel, entertainment providers, limousine drivers and chauffeurs. Such exposure took place inside limousines and cars provided by the hotels as complimentary or charged, in the lobbies, smoking rooms, guest rooms designated for smoking, hallways of the floors where rooms designated for smoking are located at the following locations:

The locations in the attached Exhibit A.

The route of exposure for 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:

COMPLETED

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 Advocacy Group, 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 Advocacy Group, Inc.** from information now available to them. With the copy of this notice submitted to the violators, a copy is provided of *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.*

Dated: 4-18-00

YEROUSHALMI & GHALCHI

By:


Reuben Yeroushalmi, Esq.
Kamran Ghalchi, Esq.
YEROUSHALMI & GHALCHI
Attorneys for *Consumer Advocacy Group, 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 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: 4/18/2000

Place of Mailing: Los Angeles, CA

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

California Attorney General
P.O. Box 944255
Sacramento CA 94244 -2550

San Diego County District Attorney
330 Broadway
San Diego, CA 92101

San Diego City Attorney
1200 3rd Ave Ste 1620
San Diego, CA 92101

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

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

Riverside County District Attorney
4077 Main St
Riverside, CA 92501

Ventura County District Attorney
800 S Victoria Ave
Ventura, CA 93003

Ashok Israni, President
Pacific Host Hotels
1785 Hancock Street
San Diego, CA 92110

Ashok Israni, President
Pacific Host Hotels
Corporate Headquarters
3185 Midway Drive, Suite T
San Diego, Ca 922110

\$52

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

Dated: 4-18-00



Greg Lewis

EXHIBIT A

**Holiday Inn Express
6705 La Jolla Blvd.
La Jolla, CA 92037**

**Days Inns and Suites
3350 Rosecrans Street
San Diego, CA 92110**

**La Jolla Shores Inn/Bird Rock
5390 La Jolla Blvd.
La Jolla, CA 92037**

**Old Town Plaza Hotel
2380 Moore Street
San Diego, CA 92110**

**The Inn at La Jolla
5390 La Jolla Blvd.
La Jolla, CA 92037**

**Super 8 Mission Valley
4380 Alvarado Canyon Rd.
San Diego, CA 92120**

**Best Western Stratford Inn of Del Mar
710 Camino Del Mar
Del Mar, CA 92014**

**Holiday Inn Express
4450 Ottay Valey Road
Chula Vista, CA 91900**

**Courtyard by Marriott
717 South Highway 101
Solana Beach, CA 92075**

**Holiday Inn Express
1290 West Valley Parkway
Escondido, CA 92029**

**Diamond Head Inn
605 Diamond Street
San Diego, CA 92109**

Seacoast Inn
800 Seacoast Drive
Imperial Beach, CA 91932

Pacific Shores Inn
4802 Mission Blvd.
San Diego, CA 92109

Best Western
Catalina Canyon Club Drive
888 Country Club Drive
P.O. Box 736
Avalon, CA 90704

Comfort Inn Long Beach
1133 Atlantic Blvd.
Long Beach, CA 90813

Best Western Image Suites
29840 Elden Ave.
Moreno Valley, CA 92557

Holiday Inn Express
2550 Erringer Road
Simi Valley, CA 93065

VIA U.S. MAIL

Pacifica Host Inc.
1775 Hancock St., Ste 185
San Diego, CA 92110
ATTN: Ashok Israni, President

Pacifica Host Inc.
Pacifica Host Hotels
1785 Hancock St.
San Diego, CA 92110
ATTN: Ashok Israni, President

Pacifica Host Inc.
Pacifica Host Hotels
3185 Midway Dr., Ste. T
San Diego, CA 92110
ATTN: Ashok Israni, President

April 9, 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:*

*Pacifica Host Inc.
Pacifica Host Hotels*

	PERIOD OF VIOLATION		
From:	4/9/98	Through 4/9/02	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,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-Nitrosoaniline
2-Nitropropane	Benzo[j]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

Holiday Inn Express
6705 La Jolla Blvd.
La Jolla, CA 92037

Days Inns and Suites
3350 Rosecrans Street
San Diego, CA 92110

La Jolla Shores Inn/Bird Rock
5390 La Jolla Blvd.
La Jolla, CA 92037

Old Town Plaza Hotel
2380 Moore Street
San Diego, CA 92110

The Inn at La Jolla
5390 La Jolla Blvd.
La Jolla, CA 92037

Super 8 Mission Valley
4380 Alvarado Canyon Rd.
San Diego, CA 92120

Best Western Stratford Inn of Del Mar
710 Camino Del Mar
Del Mar, CA 92014

Holiday Inn Express
4450 Ottay Valey Road
Chula Vista, CA 91900

Courtyard by Marriott
717 South Highway 101
Solana Beach, CA 92075

Holiday Inn Express
1290 West Valley Parkway
Escondido, CA 92029

Diamond Head Inn
605 Diamond Street
San Diego, CA 92109

**Seacoast Inn
800 Seacoast I e
Imperial Beach, CA 91932**

**Pacific Shores Inn
4802 Mission Blvd.
San Diego, CA 92109**

**Best Western
Catalina Canyon Club Drive
888 Country Club Drive
P.O. Box 736
Avalon, CA 90704**

**Comfort Inn Long Beach
1133 Atlantic Blvd.
Long Beach, CA 90813**

**Best Western Image Suites
29840 Elden Ave.
Moreno Valley, CA 92557**

**Holiday Inn Express
2550 Erringer Road
Simi Valley, CA 93065**

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

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

▽
Alleged Violators

Pacifica Host Inc.
1775 Hancock St., Ste 185
San Diego, CA 92110
ATTN: Ashok Israni, President

Pacifica Host Inc.
Pacifica Host Hotels
1785 Hancock St.
San Diego, CA 92110
ATTN: Ashok Israni, President

Pacifica Host Inc.
Pacifica Host Hotels
3185 Midway Dr., Ste. T
San Diego, CA 92110
ATTN: Ashok Israni, President

▽
Government Agencies

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

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Ventura County District Attorney
800 S Victoria Ave
Ventura, CA 93009

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