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13 HOTELS, WESTIN HOTELS, FOUR POINTS HOTEL, W HOTELS

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES
16

17 COORDINATION PROCEEDING)
SPECIAL TITLE RULE (1550(b)))

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

18 SECONDHAND SMOKE CASES)
19 _____)

20 This Document Relates to:)

CONSENT JUDGMENT

21 *Consumer Advocacy Group, Inc., et al., v.*)
Hotel Sofitel, et al., including Starwood)
22 Hotels & Resorts Worldwide, Inc., and)
affiliates Sheraton Hotels, Westin Hotels,)
23 Four Points Hotel, and W Hotels, Former)
Los Angeles County (Central) Case No.)
24 BC215056)

25 *Consumer Advocacy Group v. Pacific Hotel*)
Management, LLC, et al., Former San)
26 Francisco County Case No. 316477)

27 *Consumer Advocacy Group, Inc. v.*)
Hacienda Hotel, et al., including Inns of)
28

1 America, Former Los Angeles County)
(Central) Case No. BC255572)
2)
3 *Consumer Advocacy Group, Inc. v.*)
Destination Hotels, et al., including Lodgian)
4 Management, Former Los Angeles County)
(Central) Case No. BC234630)
5 _____)

6 This Consent Judgment is entered into by and between Consumer Advocacy
7 Group, Inc., on its own behalf and as a representative of the People of the State of California
8 (“Plaintiff” or “CAG”), and Starwood Hotels & Resorts Worldwide, Inc., Sheraton Hotels,
9 Westin Hotels, Four Points Hotel, and W Hotels concerning the settlement of all pending actions
10 between the Parties in this coordinated proceeding (“CAG Lawsuits”).

11 **I. RECITALS**

12 **WHEREAS**, CAG is a corporation registered with the State of California and is a
13 public benefit corporation and is formed for the purpose of furthering environmental causes;

14 **WHEREAS**, Starwood Hotels & Resorts Worldwide, Inc., Sheraton Hotels,
15 Westin Hotels, and Four Points Hotel own, operate, and/or manage numerous hotels throughout
16 the State of California. In addition, some of Starwood Hotels & Resorts Worldwide, Inc.,
17 Sheraton Hotels, Westin Hotels, Four Points Hotel’s hotels, and W Hotels are operated as
18 franchises in the State of California (collectively, the “Starwood Franchisees”). Collectively,
19 Starwood Hotels & Resorts Worldwide, Inc., Sheraton Hotels, Westin Hotels, Four Points Hotel,
20 and W Hotels and the Starwood Franchisees are referred to as the “Starwood Defendants” or
21 “Defendants.” (Plaintiff and Defendants are collectively referred to as the “Parties”);

22 **WHEREAS**, the properties owned, operated, or managed by Defendants are
23 referred to collectively as the “Covered Properties.” The Covered Properties are identified in
24 **Exhibit A** to this Agreement;

25 **WHEREAS**, Health and Safety Code sections 25249.5 et seq. (“Proposition 65 ”)
26 prohibits, among other things, a company of ten or more employees from knowingly and
27 intentionally exposing an individual to chemicals known to the State of California to cause
28 cancer, birth defects and other reproductive harm without first providing a clear and reasonable

1 warning to such individuals. Exposures can occur as a result of a consumer product exposure, an
2 occupational exposure, or an environmental exposure;

3 **WHEREAS**, the State of California has officially listed various chemicals
4 pursuant to Health and Safety Code section 25249.8 as chemicals known to the State of
5 California to cause cancer and/or reproductive toxicity;

6 **WHEREAS**, since approximately 1998, various organizations have sent 60-day
7 notices to a number of industries, including the hotel industry, throughout the State alleging
8 violations of Proposition 65. Collectively, these notices are referred to as the "First Wave of
9 Proposition 65 Cases." The notices, in general, were based on alleged exposures to consumers,
10 customers, guests, employees, and members of the public to tobacco and/or tobacco products
11 and/or secondhand tobacco smoke. A trial court in Los Angeles County Superior Court ruled
12 that the 60-day notices in these cases were inadequate and dismissed the cases. The California
13 Court of Appeal upheld the lower court's ruling on appeal;

14 **WHEREAS**, the second wave of cases, based on new 60-day notices, include
15 cases against hotels, gas stations, mini marts, and drugstores, among others, and allege
16 secondhand smoke exposures as well as exposures to tobacco and tobacco products. These cases
17 have been deemed complex and are proceeding in this Court as Judicial Council Coordinated
18 Proceeding No. 4182 ("JCCP 4182 ");

19 **WHEREAS**, Plaintiff served on each of the Defendants a 60-Day Notice of Intent
20 to Sue Under Health & Safety Code Section 25249.6 (the "Notices") and filed the appropriate
21 certificate of merit with the Attorney General's office pursuant to Health and Safety Code section
22 25249.7(d)(1). The Notices are attached hereto as **Exhibit B**. The Notices stated, among other
23 things, that Plaintiffs believed that Defendants violated Proposition 65 by knowingly and
24 intentionally exposing consumers, customers, visitors, guests and employees of the Covered
25 Properties, as well as the public, to certain Proposition 65 listed chemicals. Among those
26 Proposition 65 chemicals were tobacco products, tobacco smoke and secondhand tobacco smoke
27 (and their constituent chemicals, including Acetaldehyde, Acetamide, Acrylonitrile, 4-
28 Aminobiphenyl, (4-Aminodiphenyl), Aniline, Ortho-Anisidine, Arsenic (inorganic arsenic

1 Benzo[k]fluoranthene, Benzo[a]pyrene, 1,3-Butadiene, Cadmium, Captan, Chromium
2 (hexavalent compounds), Chrysene, Dichlorodiphenyltrichloroethane (DDT),
3 Dibenz[a,h]acridine, Dibenz[a,j]acridine, Dibenz[a,h]anthracene, 7H-Dibenzo[c,g]carbazole,
4 Dibenzo[a,e]pyrene, Dibenzo[a,h]pyrene, Dibenzo[a,i]pyrene, Dibenzo[a,l]pyrene, 1,1-
5 Dimethylhydrazine (UDMH), Formaldehyde (gas), Hydrazine, Lead and lead compounds (which
6 can also be found in certain electrical components), 1-Naphthylamine, 2-Naphthylamine, Nickel
7 and certain nickel compounds, 2-Nitropropane, N-Nitrosodi-n-butylamine,
8 –Nitrosodiethanolamine, N-Nitrosodiethylamine, N-Nitrosomethylethylamine,
9 –Nitrosomorpholine, N-Nitrosornicotine, N-Nitrosopiperidine, N-Nitrosopyrrolidine, Ortho-
10 Toluidine, Tobacco Smoke, Urethane (Ethyl carbamate), Carbon disulfide, Carbon monoxide,
11 Lead, Nicotine, Toluene, Tobacco Smoke, and Urethane) that were raised or that could have been
12 raised in the Notices and the CAG Lawsuits.

13 B. No Admission. Defendants dispute that they have violated Proposition 65
14 as described in the Notices and the CAG Lawsuits. In particular, Defendants contend that no
15 warning is required for the exposures Plaintiff alleges. In any event, Defendants further contend
16 that most, if not all, of the Covered Properties have had compliant Proposition 65 notices in
17 place, and that the existing notices that Defendants have provided fully comply with Proposition
18 65. Defendants have shared this information with Plaintiff regarding the various defenses
19 Defendants could raise to the Proposition 65 claims. Plaintiff disputes that Defendants have
20 complied with Proposition 65.

21 Based on the foregoing, nothing contained in this Agreement shall be construed as
22 an admission by Plaintiff or Defendants that any action that Defendants may have taken, or failed
23 to take, violates Proposition 65 or any other statute, regulation or principal of common law.
24 Defendants expressly deny any alleged violations of Proposition 65.

25 C. Effective Upon Final Determination. Defendants' willingness to enter into
26 this Agreement is based upon the understanding that this Agreement will fully and finally resolve
27 all claims related to tobacco products, tobacco smoke, and secondhand tobacco smoke (and their
28 constituent chemicals, including Acetaldehyde, Acetamide, Acrylonitrile, 4-Aminobiphenyl, (4-

1 Aminodiphenyl), Aniline, Ortho-Anisidine, Arsenic (inorganic arsenic compounds),
2 Benz[a]anthracene, Benzene, Benzo[b]fluoranthene, Benzo[j]fluoranthene,
3 Benzo[k]fluoranthene, Benzo[a]pyrene, 1,3-Butadiene, Cadmium, Captan, Chromium
4 (hexavalent compounds), Chrysene, Dichlorodiphenyltrichloroethane (DDT),
5 Dibenz[a,h]acridine, Dibenz[a,j]acridine, Dibenz[a,h]anthracene, 7H-Dibenzo[c,g]carbazole,
6 Dibenzo[a,e]pyrene, Dibenzo[a,h]pyrene, Dibenzo[a,i]pyrene, Dibenzo[a,l]pyrene, 1,1-
7 Dimethylhydrazine (UDMH), Formaldehyde (gas), Hydrazine, Lead and lead compounds, 1-
8 Naphthylamine, 2-Naphthylamine, Nickel and certain nickel compounds, 2-Nitropropane,
9 -Nitrosodi-n-butylamine, N-Nitrosodiethanolamine, N-Nitrosodiethylamine,
10 -Nitrosomethylethylamine, N-Nitrosomorpholine, N-Nitrosornicotine, N-Nitrosopiperidine,
11 N-Nitrosopyrrolidine, Ortho-Toluidine, Tobacco Smoke, Urethane (Ethyl carbamate), Carbon
12 disulfide, Carbon monoxide, Lead, Nicotine, Toluene, Tobacco Smoke, and Urethane) brought
13 by Plaintiff.

14 III. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS

15 A. Environmental and Occupational Exposure Warnings. Defendants assert
16 they have been in compliance with Proposition 65 warning requirements relating to
17 environmental and occupational exposures because they post, and have posted, warnings at the
18 Covered Properties. Plaintiff disagrees with this assertion. With regard to the alleged exposures
19 to the Noticed Chemicals, Defendants will post within ninety days following the entry of
20 Judgment, a warning with substantially the following language at the primary points of entry at
21 each of the Covered Properties and on the employees' bulletin board or inside of the employees'
22 handbook:

23 **WARNING:**

24 This Facility Contains Chemicals Known to the State of California
25 To Cause Cancer and Birth Defects or Other Reproductive Harm.
26 Smoking is permitted in smoking areas and certain areas of the premises.
27 Tobacco smoke contains chemicals known to the State of California to
28 cause Cancer and Birth Defects or other Reproductive Harm. A Brochure
With More Information on Specific Chemical Exposures is Available at
the Front Desk.

1 A copy of a sample brochure is attached hereto as **Exhibit C**. Defendants will
2 have the brochure available for dissemination at the registration desk of each of the Covered
3 Properties by placing it in a plexiglass envelope or stand at the front registration desk.

4 Defendants will maintain a warning with substantially the following language at
5 every location at each of the Covered Properties where smoking is permitted, including inside of
6 any guestroom that is designated for smokers and at the elevator landing area on each floor with
7 designated smoking rooms:

8 **WARNING:**

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

12 The provision of said warnings shall be deemed to satisfy all obligations under
13 Proposition 65 by all person(s) or entity(ies) with respect to all environmental and occupational
14 exposures to Noticed Chemicals.

15 Each of the warnings set forth in this Section III. A. shall conform to the
16 regulations for alcoholic beverage warnings signs in terms of size and print ((Cal. Code Regs., tit.
17 22, § 12601, subd. (b)(1)(D)) and shall be located where they can be easily seen. The warnings
18 described in this Section III. A. may be combined with other information on a single sign and
19 may be provided by the same media and in the same or similar format in which other hotel
20 information is provided to guests, employees and to the public.

21 B. Consumer Product Warning. Defendants assert they have been in
22 compliance with Proposition 65 warning requirements relating to consumer product exposures
23 with respect to tobacco products because they or their gift shop operators/lessees post, and have
24 posted, warnings at the Covered Properties. Plaintiff disagrees. Defendants agree to request
25 their gift shop operators/lessees to maintain a warning at those Covered Properties where cigars,
26 cigarettes, or other tobacco products are sold. For those Covered Properties, the following
27 warning shall be prominently displayed at or near the point of sale of such products:
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WARNING:

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

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

C. Compliance. Defendants' compliance with Sections III. A. and III. B. above is deemed to fully satisfy Defendants' obligations under Proposition 65 with respect to any exposures and potential exposures to Noticed Chemicals in all respects and to all person(s) and entity(ies). Defendants' compliance with Sections III. A. and III. B. above will not relieve Defendants of any obligation to continue to provide the statutorily approved warnings for alcohol.

D. Future Laws or Regulations. In lieu of complying with the requirements of Sections III. A. and III. B. hereof, if: (a) any future federal law or regulation which governs the warning provided for herein preempts state authority with respect to said warning; or (b) any future warning requirements with respect to the subject matter of said Sections is proposed by any industry association and approved by the State of California, Defendants may comply with the warning obligations set forth in Sections III. A. and III. B. of this Agreement by complying with such future federal law or regulation or such future warning requirement upon notice to Plaintiff.

E. Statutory Amendment to Proposition 65. If a statutory or other amendment to Proposition 65, or regulation is adopted pursuant to Proposition 65, which would exempt Defendants, the "Released Parties," as defined at Section IV. B. below, or the class to which Defendants belong, from providing the warnings described herein, then, upon the adopting of such statutory amendment or regulation, and to the extent provided for in such statutory

1 amendment or regulation, Defendants shall be relieved from their obligation to provide the
2 warnings set forth herein.

3 **IV. RELEASE AND CLAIMS COVERED**

4 A. Effect of Agreement. The Agreement is a full and final agreement with
5 respect to any claims regarding the Noticed Chemicals asserted in the CAG Lawsuits against the
6 Released Parties, and the Notice against Defendants regarding the Covered Properties, including
7 but not limited to: (a) claims for any violations of Proposition 65 by the Released Parties
8 including, but not limited to, claims arising from consumer product, environmental, and
9 occupational exposures to the Noticed Chemicals, wherever occurring on the Covered Properties
10 and to whomever occurring, through and including the date upon which the Consent Judgment
11 becomes final, including all appeals; and (b) the Released Parties' continuing responsibility to
12 provide the warnings mandated by Proposition 65 with respect to Noticed Chemicals.

13 B. Release. Except for such rights and obligations as have been created under
14 this Agreement, Plaintiff, on its own behalf and bringing an action "in the public interest"
15 pursuant to Health and Safety Code section 25249.7, subdivision (d), with respect to the matters
16 regarding the Noticed Chemicals alleged in the CAG Lawsuit, does hereby fully, completely,
17 finally and forever release, relinquish and discharge: (a) Starwood Hotels & Resorts Worldwide,
18 Inc.; (b) Sheraton Hotels; (c) Westin Hotels; (d) Four Points Hotel; (e) W Hotels; (f) the
19 Starwood Franchisees; (g) the past, present, and future owners, lessors, sublessors, managers and
20 operators of, and any others with any interest in, only related as to the Covered Properties; and
21 (h) the respective officers, directors, shareholders, affiliates, agents, employees, attorneys,
22 successors and assigns of the persons and entities described in (a), (b), (c), (d), (e), and (f)
23 immediately above (collectively (a), (b), (c), (d), (e), (f), (g) and (h) are the "Released Parties") of
24 and from all claims, actions, causes of action, demands, rights, debts, agreements, promises,
25 liabilities, damages, accountings, costs and expenses, whether known or unknown, suspected or
26 unsuspected, of every nature whatsoever that Plaintiff has or may have against the Released
27 Parties, arising directly or indirectly out of any fact or circumstance occurring prior to the date
28 upon which the Consent Judgment becomes final, including all appeals, relating to alleged

1 violations of Proposition 65 by the Released Parties, and their respective agents, servants and
2 employees, being hereinafter referred to as the "Released Claims." In sum, the Released Claims
3 include all allegations made, or that could have been made, by Plaintiff with respect to the
4 Noticed Chemicals relating to Proposition 65.

5 C. Intent of Parties. It is the intention of the Parties to this release that, upon
6 entry of judgment and conclusion of all appeals or litigation relating to this Agreement itself, that
7 this Agreement shall be effective as a full and final accord and satisfaction and release of every
8 Released Claim. In furtherance of these intentions, Plaintiff acknowledges that it is familiar with
9 Civil Code section 1542, which provides as follows:

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

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

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

27 Plaintiff represents and warrants that it is a public benefit corporation formed for the
28 specific purposes of: (a) protecting and educating the public as to harmful products and activities,
(b) encouraging members of the public to become involved in issues effecting the environment

1 and the enforcement of environmental statutes and regulations including, but not limited to,
2 Proposition 65 and (c) instituting litigation to enforce the provisions of Proposition 65.

3 E. No Further Force and Effect. In the event that the Court denies the joint
4 motion to approve the Consent Judgment brought by Plaintiff and Defendants pursuant to Health
5 and Safety Code section 25249.7, and declines to enter the Judgment, this Consent Judgment
6 shall be of no force or effect, and cannot be used in any proceeding for any purpose.

7 **V. ATTORNEY'S FEES AND COSTS**

8 A. Payment to Yeroushalmi & Associates. In an effort to defray CAG's
9 expert fees and costs, costs of investigation, attorney's fees, or other costs incurred relating to
10 this matter, Defendants shall pay to the firm of Yeroushalmi & Associates as follows:

11 The Starwood Defendants shall pay to Plaintiff the sum of \$75,000.

12 This amount shall be paid within ten days following the entry of judgment,
13 including all appeals, approving the Consent Judgment.

14 **VI. DISPUTES UNDER THE AGREEMENT**

15 A. Disputes. Should a dispute arise with respect to either party's compliance
16 with the terms of this Agreement, the Parties shall meet, either in person or by telephone, and
17 endeavor to resolve the dispute in amicably. No action may be taken to enforce the provisions of
18 the Agreement absent such a good faith effort to resolve the dispute prior to the taking of such
19 action. In the event that legal proceedings are initiated to enforce the provisions of the
20 Agreement, however, the prevailing party in such a proceeding may seek to recover its costs and
21 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means
22 a party who is successful in obtaining relief more favorable to it than the relief that the other
23 party was amenable to providing during the Parties' good faith attempt to resolve the dispute that
24 is the subject of such enforcement action.

25 **VII. THIRD-PARTY LITIGATION**

26 A. Duty to Cooperate. In the event of any litigation, including but not limited
27 to opposition to entry of this Agreement by the Court or to opposition to entry of the Consent
28 Judgment by the Court and all appeals relating thereto, instituted by a third party or governmental

1 entity or official, the Parties agree to affirmatively cooperate in all efforts to defend against such
2 litigation.

3 VIII. NOTICES

4 A. Written Notice Required. All notices between the Parties provided for or
5 permitted under this Agreement, or by law, shall be in writing and shall be deemed duly served:

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

7 or

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

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

15 Notices pursuant to this Section shall be sent to the Parties as follows:

16 (a) If to Plaintiff:

17 Reuben Yeroushalmi
18 Yeroushalmi & Associates
19 3700 Wilshire Boulevard, Suite 480
20 Los Angeles, CA 90010
21 Facsimile Number: (213) 382-3430

22 (b) If to Defendant:

23 William W. Funderburk, Jr.
24 Stanzler Funderburk & Castellon LLP
25 811 Wilshire Boulevard
26 Suite 1025
27 Los Angeles, CA 90017
28 Facsimile Number: (213) 532-3984

and

Mr. David Marshall
Vice President and Associate General Counsel

1 Starwood Hotels & Resorts Worldwide, Inc.
2 1111 Westchester Avenue
3 White Plains, NY 10604

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

6 IX. INTEGRATION

7 A. Integrated Writing. This Agreement constitutes the final and complete
8 agreement of the Parties with respect to the subject matter hereof and supersedes all prior or
9 contemporaneous negotiations, promises, covenants, agreements or representations concerning
10 any matters directly, indirectly or collaterally related to the subject matter of this Agreement.
11 The Parties have expressly and intentionally included in this Agreement all collateral or
12 additional agreements that may, in any manner, touch or relate to any of the subject matter of this
13 Agreement and, therefore, all promises, covenants and agreements, collateral or otherwise, are
14 included herein and therein. The Parties intend that this Agreement shall constitute an
15 integration of all their agreements, and each understands that in the event of any subsequent
16 litigation, controversy or dispute concerning any of its terms, conditions or provisions, no party
17 hereto shall be permitted to offer or introduce any oral or extrinsic evidence concerning any other
18 collateral or oral agreement between the Parties not included herein.

18 X. TIMING

19 A. Time of Essence. Time is of the essence in the performance of the terms of
20 this agreement.

21 XI. COMPLIANCE WITH REPORTING REQUIREMENTS

22 A. Reporting Forms; Presentation to Attorney General. The Parties agree to
23 comply with the reporting form requirements referenced in Health and Safety Code section
24 25249.7, subdivision (f).

25 XII. COUNTERPARTS

26 A. Counterparts. This Agreement may be signed in counterparts and shall be
27 binding upon the Parties hereto as if all of said Parties executed the original hereof. A facsimile
28 or pfd. signature shall be as valid as the original.

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XIII. WAIVER

A. No Waiver. No waiver by any party hereto of any provision herein shall be deemed to be a waiver of any other provision herein or of any subsequent breach of the same of any other provision herein.

XIV. AMENDMENT

A. In Writing. This Agreement cannot be amended or modified except by a writing executed by the Parties that expresses, by its terms, an intention to modify this Agreement.

XV. SUCCESSORS

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

XVI. CHOICE OF LAWS

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

XVII. NO ADMISSIONS

A. Agreement Cannot Be Used As Evidence. This Agreement has been reached by the Parties to avoid the costs of prolonged litigation. By entering into this Agreement, neither Plaintiff nor Defendants admit any issue of fact or law, including any violations of Proposition 65. 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 Agreement, nor any document referred to herein, nor any action taken to carry out this Agreement, shall be construed as giving rise to any presumption or inference of admission or concession by Defendants as to any fault, wrongdoing or liability whatsoever. Neither this Agreement, nor any of its terms of provisions, nor any of the negotiations or other proceedings connected with it, nor any other action taken to carry out this Agreement, by any of the Parties

1 hereto, shall be referred to, offered as evidence, or received in evidence in any pending or future
2 civil, criminal or administrative action or proceeding, except in a proceeding to enforce this
3 Agreement, to defend against the assertion of the Released Claims or as otherwise required by
4 law.

5 **XVIII. REPRESENTATION**

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

11 **XIX. SEVERABILITY**

12 A. Severability after Entry of Judgment. If after entry of judgment pursuant
13 to this Consent Judgment, any of the provisions of this Agreement are held by a court to be
14 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

15 **XX. AUTHORIZATION**

16 A. Authority to Enter Agreement. Each of the signatories hereto certifies that
17 he or she is authorized by the party he or she represents to enter into this Agreement, to stipulate
18 to the Agreement, and to execute and to approve the Agreement on behalf of the party
19 represented.

20 [Signature page to follow]

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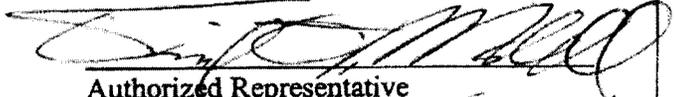
Dated: _____, 2008

CONSUMER ADVOCACY GROUP, INC.


Authorized Representative

Dated: July 25, 2008

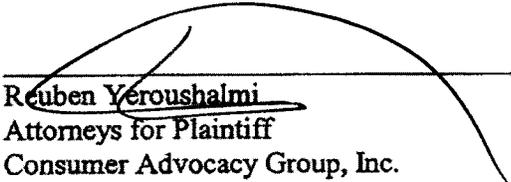
STARWOOD HOTELS & RESORTS
WORLDWIDE, INC., AND AFFILIATES
SHERATON HOTELS, WESTIN HOTELS,
FOUR POINTS, W HOTELS


Authorized Representative
UPO ASSOC. GEN. COUNSEL

Approved as to form:

Dated: _____, 2008

YEROUSHALMI & ASSOCIATES


Reuben Yeroushalmi
Attorneys for Plaintiff
Consumer Advocacy Group, Inc.

Dated: _____, 2008

STANZLER FUNDERBURK
CASTELLON LLP

William W. Funderburk, Jr.
Attorney for Defendants
Starwood Hotels & Resorts Worldwide, Inc.,
And Affiliates Sheraton Hotels, Westin
Hotels, Four Points Hotel, W Hotels

IT IS SO ORDERED.

Dated: _____

Honorable William Highberger