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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 01 2005

ALAN SLATER, Clerk of the Court
B. Robinson
BY B. ROBINSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CONSUMER DEFENSE GROUP
ACTION

CASE NO. 05CC03203

Plaintiff,

vs.

DEMMON FAMILY PARTNERSHIP;
ELKOR REALTY GROUP; LARAMAR
COMMUNITIES, LLC; CLARUM
HOMES; MILAN PROPERTIES LLC;
RAFANELLI & NAHAS PROPERTIES
dba R&N PROPERTIES; INTERLAND
CORPORATION; AUTUMN RIDGE
ASSOCIATES, L.P.; I.H.A. ASSOCIATES;
DAVIS TANGLEWOOD, LLC; THE
PARK AT WEST POINT, LLC; FOLSOM
RANCH, LLC; IRON POINT, LLC;
BELLA VISTA AT SANTA CLARA, LLC;
CARLYLE AT SANTA CLARA;
NANTUCKET, LLC; WOODSIDE OAKS
ASSOCIATES, L.P.; AMHERST PLACE,
LLC; ROSEMEAD, LLC; DECROON
PROPERTIES CORP.; HPG
MANAGEMENT SERVICE COMPANY;
KIRBY SACK PROPERTIES, INC.; GSF
PROPERTIES, INC AND GOLDEN
STATE FINANCIAL CORPORATION;
JKL CORPORATION AND DOES 1-100
Defendants.

**[PROPOSED] CONSENT JUDGMENT
BETWEEN PLAINTIFF AND
INTERLAND CORPORATION;
AUTUMN RIDGE ASSOCIATES, L.P.;
I.H.A. ASSOCIATES; DAVIS
TANGLEWOOD, LLC; THE PARK AT
WEST POINT, LLC; FOLSOM RANCH,
LLC; IRON POINT, LLC; BELLA VISTA
AT SANTA CLARA, LLC; CARLYLE AT
SANTA CLARA; NANTUCKET, LLC;
WOODSIDE OAKS ASSOCIATES, L.P.;
AMHERST PLACE, LLC; ROSEMEAD,
LLC**

1. INTRODUCTION

1.1 Plaintiff CONSUMER DEFENSE GROUP ACTION, dba Consumer Defense Group, is a California corporation suing "in the public interest" pursuant to Health and Safety Code section 25249.7(d) and Business and Professions Code section 17204.

1.2 INTERLAND CORPORATION; AUTUMN RIDGE ASSOCIATES, L.P.; I.H.A. ASSOCIATES; DAVIS TANGLEWOOD, LLC; THE PARK AT WEST POINT, LLC; FOLSOM RANCH, LLC; IRON POINT, LLC; BELLA VISTA AT SANTA CLARA, LLC; CARLYLE AT SANTA CLARA; NANTUCKET, LLC; WOODSIDE OAKS ASSOCIATES, L.P.; AMHERST PLACE, LLC; ROSEMEAD, LLC (hereinafter referred to collectively as "Settling Defendant") owns and/or manages the apartment and other facilities in California set forth on the attached Exhibit A, which is incorporated as if set forth fully herein (collectively the "Facilities").

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

1.4 More than sixty-five (65) days prior to filing suit in this action, Plaintiff served Settling Defendant with a document entitled "Amended 60-Day Notice of Intent to Sue Pursuant to California Health & Safety Code sections 25249.5" (the "Notice"). The Notice stated, among other things, that Plaintiff believed that Settling Defendant was in violation of California Health & Safety Code sections 25249.5, *et seq.* ("Proposition 65") for knowingly and intentionally exposing consumers, customers, and employees of the Facilities, as well as the public, to tobacco products, tobacco smoke and their constituent chemicals as well as chemicals found in automotive exhausts and fumes, and other chemicals (hereinafter referred to collectively as "the Noticed Chemicals") known to cause cancer, birth defects and other reproductive harm without first providing a clear and reasonable warning to such individuals.

1.5 Plaintiff filed this lawsuit in the Superior Court of the State of California for the
1 County of Orange (the "Court") entitled Consumer Defense Group Action v. Demmon Family
2 Partnership; Elkor Realty Group; Laramar Communities, LLC; Clarum Homes; Milan
3 Properties Llc; Rafanelli & Nahas Properties Db a R&n Properties; Interland Corporation;
4 Autumn Ridge Associates, L.P.; I.H.A. Associates; Davis Tanglewood, LLC; The Park at West
5 Point, LLC; Folsom Ranch, LLC; Iron Point, LLC; Bella Vista at Santa Clara, LLC;
6 Nantucket, LLC; Woodside Oaks Associates, L.P.; Amherst Place, LLC; Rosemead, LLC;
7 Decron Properties Corp.; HPG Management Service Company; Kirby Sack Properties, Inc.;
8 Gsf Properties, Inc and Golden State Financial Corporation; JKL Corporation and DOES 1-
9
10 100, Orange County Superior Court Case No. 05C03203 naming Settling Defendant as a
11 defendant (the "Lawsuit"). Plaintiff and Settling Defendant are hereafter referred to
12 individually each as a "Party" and collectively as the "Parties."

1.6 Settling Defendant disputes that it has violated Proposition 65 as described in
15 the 60 Day Notices. Plaintiff disputes that Settling Defendant has complied with Proposition
16 65.

1.7 Plaintiff and Settling Defendant wish to resolve the issues raised by the 60 Day
19 Notices and the Lawsuit pursuant to the terms and conditions described herein. In entering into
20 this Consent Judgment, both Plaintiff and Settling Defendant recognize that this Consent
21 Judgment is a full and final settlement of all claims that were raised or which could have been
22 raised in the Lawsuit or pursuant to either of the 60 Day Notices described above.

1.8 Nothing contained in this Consent Judgment shall be construed as an admission
25 by any party or the "Released Parties," as defined in paragraph 4.2 below, that any action that
26 Settling Defendant or the "Released Parties" may have taken, or failed to take, violates
27 Proposition 65 or any other provision of any other statute, regulation or principal of common
28 law, including without limitation Business & Professions Code §17200, et seq.

2. **JURISDICTION**

1 2.1 For purposes of this Consent Judgment only, the Parties agree that:

2 2.2 Each of the parties hereto acknowledges that they are subject to jurisdiction
3 before all Courts for the State of California and agrees that no proceeding respecting any
4 dispute regarding the interpretation of this Consent Judgment, the performances of the parties
5 pursuant to the terms of this Consent Judgment, or the damages accruing to a party by reason of
6 any breach of this Consent Judgment shall be commenced in any other Court.
7

8 2.3 Each of the parties hereto hereby agrees that venue of any dispute regarding the
9 interpretation of this Consent Judgment, the performance of the parties pursuant to the terms of
10 this Consent Judgment, or the damages accruing to a party by reason of any breach of this
11 Consent Judgment shall be proper before the Superior Court of the State of California for the
12 County of Orange and hereby waives any right that such party may have to object to such venue
13 or to seek to transfer the venue of such dispute to any other Court on the basis that such Court
14 would be a more convenient forum.
15

16 2.4 The Court has jurisdiction to enter this Consent Judgment as a full and final
17 judgment.
18

19 3. **INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

20 3.1 Environmental, Occupational Exposure and Consumer Products Warnings - General.

21 Settling Defendants maintain they have been in compliance with Proposition 65 warning
22 requirements because they post, and have posted, Proposition 65 warnings at the Covered
23 Properties. With regard to the alleged exposures to the Included Chemicals, Defendants agree
24 that, if and to the extent they have not already done so, they will institute and continue to
25 maintain the exposure warning methodology specified in this Section 3 (hereinafter,
26 "Compliance Methodology").
27
28

3.2 Definitions.

1 3.2.1. Residential Rental Properties. "Residential Rental Properties" means all
2 Covered Properties (the facilities identified on Exhibit A hereto) not included in
3 the definition of Other Rental Facilities in Section 3.2.2, below.

4
5 3.2.2. Other Rental Facilities. "Other Rental Facilities" means those Covered
6 Properties that constitute (i) single family homes, (ii) vacation homes, (iii)
7 cottages, (iv) duplexes, (v) triplexes, (vi) buildings or rental facilities with fewer
8 than five separate apartments or dwelling units for rent, and (vii) buildings
9 which contain a mix of owner occupied units and dwelling units for rent (i.e.,
10 condominium developments). "Single family homes," "vacation homes," and
11 "cottages" shall mean those residential housing facilities that fall outside the
12 definition of a "common interest development" set forth in California Civil Code
13 section 1351(c).

14
15 3.2.3 Tenants. "Tenants" shall mean all persons who rent dwelling units.

16
17 3.2.4 Guests. "Guests" shall mean all persons not included in the definition of
18 Tenants in Section 3.2.3, above.

19 3.3 Environmental Exposure Warnings.

20 3.3.1. Tenants of Residential Rental Properties.

21 The Compliance Methodology for environmental exposures for Tenants at Residential
22 Rental Properties shall consist of: (i) a warning as set forth in Section 3.3.1.a below, and (ii) an
23 informational pamphlet, brochure, or similar document (hereinafter "informational brochure")
24 as set forth in Section 3.3.1.b, below.

25
26 (a) Location of Warnings. For Residential Rental Properties, the warning specified
27 in Section 3.3.1. (a) (3), below, shall be placed as follows:
28

1 (1) Enclosed (limited access) Residential Rental Properties. Where entrances to
2 individual units are on enclosed hallways and/or hallways which are open to ambient
3 air, warning signs shall be posted at public entrances to the building, including (i)
4 entrances (both vehicular and pedestrian) to parking garages, if any, and (ii) entrance to
5 administrative offices, if any.

6 (2) Non-Enclosed Residential Rental Properties. Warning signs shall be posted at
7 points of public entry, such as open entrances to the Residential Rental Property, or on
8 walls by pathways which provide access to apartment units, including entrances (both
9 vehicular and pedestrian) to parking garages, if any. Additionally, for non-enclosed
10 Residential Rental Properties, warning signs would be posted in public areas (i.e., pools,
11 open spaces, playgrounds, or community buildings), if such area can be accessed from a
12 point other than a public entrance to the property.

13
14 Warning Language, Size and Format.

15 (3) The warning sign language shall be substantially the following:

16
17 WARNING

18 This Area Contains Chemicals Known To The
19 State Of California To Cause Cancer and Birth Defects
20 Or Other Reproductive Harm.

21 More Information On Specific Exposures Has Been Provided
22 To Tenants And Is Available At www.prop65apt.org

23 (4) The size and format of the warning language specified above shall be in
24 substantially the same manner as set forth in **Exhibit B** hereto, or larger. If
25 Settling Defendant previously posted warning signs in the form of **Exhibit C**
26 hereto it may comply with this provision by adding the "More Information On
27 Specific Exposures Has Been Provided To Tenants And Is Available At
28

www.prop65apt.org" phrasing immediately below existing warning signs. The text size shall be at least the same size as the existing warning sign text.

(b). Informational Brochure.

(1) The language in the informational brochure concerning identified exposures shall be substantially as set forth in **Exhibit D** hereto.

(2) Within ninety (90) days following the court's approval of the Consent Judgment, Defendants shall provide existing Tenants of Residential Rental Properties with a copy of the informational brochure.

(3) Beginning on the ninetieth (90) day following the court's approval of the Consent Judgment, Defendants shall provide to all new Tenants of Residential Rental Properties an informational brochure at the time each Tenant executes the initial rental or lease agreement.

3.3.2 Tenants of Other Rental Facilities.

The Compliance Methodology for environmental exposures to Included Chemicals for Tenants at Other Rental Facilities shall consist of providing an informational brochure as set forth above in Section 3.3.1.b.(1)-(3), above.

3.3.3 Guests of Residential Rental Properties.

The Compliance Methodology for environmental exposures to Included Chemicals for Guests at Residential Rental Properties shall consist of a warning as set forth in Section 3.3.1.a. and 3.3.1.b., above.

3.3.4 Guests of Other Rental Facilities.

The Compliance Methodology for environmental exposures to Included Chemicals for Guests at Other Rental Facilities shall consist of an informational brochure as set forth in Section 3.3.1.b, above. Defendants shall comply with this Section by delivering via first class mail one informational brochure yearly to each individual dwelling unit at an Other Rental

Facility. The mailed envelope shall be labeled: "TO ALL OCCUPANTS/GUESTS."

1 Defendants shall mail the first annual copy of the informational brochure beginning within
2 ninety (90) days following the court's approval of the Consent Judgment.

3
4 **3.4 Occupational Exposure Warnings.**

5 The Compliance Methodology for occupational exposures shall consist of the following:

6 **3.4.1 Employees.** Within ninety (90) days following the court's approval of the
7 Consent Judgment, Defendants shall place the warning sign and informational
8 brochure specified in Sections 3.3.1.a and 3.3.1.b on employee bulletin boards or
9 in employee handbooks, if they exist.

10
11 **3.4.2 Independent Contractors.** For purposes of this Consent Judgment, independent
12 contractors shall be considered the same as Guests of Residential Rental
13 Properties. Accordingly, Defendants who comply with Sections 3.3.3, above,
14 are deemed to have provided "clear and reasonable" warnings to independent
15 contractors.

16
17 **3.5 Consumer Product Warnings.**

18 **3.5.1 Foods and Non-Alcoholic Beverages.** With respect to each Covered Property
19 where foods and/or non-alcoholic beverages are sold or served in common areas
20 by Defendants, the informational brochure set forth in Section 3.3.1.b., above,
21 shall include substantially the following.

22 a. **WARNING:**

23 Chemicals Known To The State Of California To Cause Cancer, Or Birth
24 Defects Or Other Reproductive Harm May Be Present In Foods Or
25 Beverages Sold Or Served Here.

26
27 **3.5.2 Alcoholic Beverages.** Nothing in this Consent Judgment shall be deemed to
28 enhance or diminish in any manner whatsoever the obligation of Defendants to

1 comply fully with Title 22, *California Code of Regulations*, section
2 12601(b)(1)(D) with respect to each Covered Property which sells or serves
3 alcoholic beverages of any kind in common areas. However, Defendants who do
4 not sell or serve alcoholic beverages in common areas, but permit tenants to
5 consume alcoholic beverages in these areas, are not required to provide a
6 specific alcohol warning under Title 22, *California Code of Regulations*, section
7 12601(b)(1)(D).

8 **3.5.3 Other Consumer Products.** With respect to other consumer product exposures as
9 defined in Title 22, *California Code of Regulations*, section 12601(b),
10 Defendants shall comply with Section 3.3 (Environmental Exposure Warnings)
11 hereof. This Section, however, shall not be deemed to apply with respect to
12 consumer products that are sold or provided to tenants, guests, employees or
13 independent contractors in individual packaging or containers in which they
14 were received originally from the manufacturer or distributor.

15
16
17 **3.6 Effect of Implementing and Maintaining the Compliance Methodology.**

18 This Court finds, and the Parties agree, that entry of this Consent Judgment and
19 providing the warnings and informational brochure comprising the Compliance Methodology
20 specified above in this Section 3 shall satisfy all requirements and obligations under
21 Proposition 65 with respect to any and all actual environmental, occupational, and consumer
22 product exposures (as defined in subsection 3.5.3 above) to the Noticed Chemicals. The Court
23 finds that the Compliance Methodology is clear and reasonable.

24
25 **3.7 Effect of Defendant Ceasing Ownership, Operation and/or Management of a Covered**
26 **Property.**

1 In the event a Defendant ceases ownership, operation and/or management of a Covered
2 Property, such Defendant is relieved of having to comply with the requirements of Sections 3.1,
3 *et seq.* hereof concerning the Covered Property.

4 **3.8 Future Laws or Regulations.**

5 In lieu of complying with the requirements of Sections 3.3, 3.4 or 3.5 hereof, if: (a) any
6 future federal law or regulation which governs the warnings provided for herein preempts state
7 authority with respect to said warning; or (b) any future warning requirements with respect to
8 the subject matter of said paragraphs is proposed by any industry association and approved by
9 the State of California; or (c) any future new State law or regulation specifying a specific
10 warning for the rental housing industry with respect to the subject matter of said paragraphs,
11 Defendants may comply with the warning obligations set forth in this Consent Judgment by
12 complying with such future federal or State law or regulation or such future warning
13 requirement upon notice to Plaintiffs.

14 **3.9 Amendment to Proposition 65.**

15 In the event that there is any amendment to Proposition 65 or regulations are adopted
16 pursuant to Proposition 65, which would exempt Defendants, the "Released Parties," as defined
17 in Section 4.1 below, or the class to which Defendants belong, from providing the warnings
18 described herein, then, upon the adoption of such amendment or regulation, and to the extent
19 provided for in such amendment or regulation, Defendants shall be relieved from their
20 obligations to provide the warnings set forth herein.

21 **4. RELEASE OF CLAIMS**

22 **4.1** The Judgment is a full and final judgment with respect to any claims asserted in
23 the Lawsuit herein against the Released Parties and each of them, and the 60 Day Notices
24 against Settling Defendant regarding the Facilities, including, but not limited to: (a) claims for
25 any violations of Proposition 65 by the Released Parties and each of them arising from
26
27
28

1 environmental and occupational exposures to the Noticed Chemicals, wherever occurring and
2 to whomever occurring, through and including the earlier of: (i) the date upon which the
3 warnings prescribed by paragraphs 3.1 through 3.3 of the Consent Judgment are posted; and (ii)
4 90 days following the date upon which the Judgment is entered; (b) claims for violation of the
5 Unfair Competition Act (Cal. Bus. & Prof. Code §17200, et seq.) arising from the foregoing
6 circumstances, including, but not limited to, Plaintiff's asserted right to injunctive and monetary
7 relief; and (c) the Released Parties' continuing responsibility to provide the warnings mandated
8 by Proposition 65 with respect to the Noticed Chemicals.

9
10 4.2 Except for such rights and obligations as have been created under this Consent
11 Judgment, Plaintiff, on its own behalf and suing in the public interest with respect to the
12 matters alleged in the Lawsuit herein, does hereby fully, completely, finally and forever release,
13 relinquish and discharge: (a) Settling Defendant, (b) the past, present, and future owners,
14 lessors, sublessors, managers and operators of, and any others with any interest in, the
15 Facilities, and (c) the respective officers, directors, shareholders, affiliates, agents, employees,
16 attorneys, successors and assigns of the persons and entities described in (a) and (b)
17 immediately above (all collectively the "Released Parties") of and from any and all claims,
18 actions, causes of action, demands, rights, debts, agreements, promises, liabilities, damages,
19 accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of
20 every nature whatsoever which Plaintiff has or may have against the Released Parties, arising
21 directly or indirectly out of any fact or circumstance occurring prior to the date hereof, or
22 existing as of the date hereof, relating to exposure to the Noticed Chemicals by Settling
23 Defendant, its agents, servants and employees, and the exposure of any person, including but
24 not limited to employees, guests, and customers of Settling Defendant, and the public at large,
25 to the Noticed Chemicals, on or off the premises of the Facilities, being hereinafter referred to
26 as the "Released Claims."
27
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4.3 It is the intention of the Parties to this release that this Consent Judgment shall
1 be effective as a full and final accord and satisfaction and release of each and every Released
2 Claim. In furtherance of this intention, the Parties to this release, and each of them,
3 acknowledge that they are familiar with California Civil Code Section 1542, which provides as
4 follows:
5

6 A general release does not extend to claims which the creditor
7 does not know or suspect to exist in his favor at the time of
8 executing the release, which if known by him must have
9 materially affected his settlement with the debtor.
10

11 The Parties to this release, and each of them, hereby waive and relinquish all of the rights and
12 benefits which any of them has, or may have, under California Civil Code Section 1542 (as well
13 as any similar rights and benefits which they may have by virtue of any statute or rule of law in
14 any other state or territory of the United States). The Parties to this release, and each of them,
15 hereby acknowledge that they may hereafter discover facts in addition to, or different from,
16 those which they now know or believe to be true with respect to the subject matter of this
17 Consent Judgment and the Released Claims, but that notwithstanding the foregoing, it is their
18 intention hereby to fully, finally, completely and forever settle and release each, every and all
19 Released Claims, and that in furtherance of such intention, the releases herein given shall be
20 and remain in effect as full and complete general releases, notwithstanding the discovery or
21 existence of any such additional or different facts.
22

23
24 4.4 Plaintiff hereby warrants and represents to Settling Defendant and the Released
25 Parties that, as to any Released Claim: (a) Plaintiff is the sole and absolute owner thereof, (b)
26 Plaintiff has not previously assigned any Released Claim, and (c) Plaintiff has the right, ability
27 and sole power to release each Released Claim.
28

4.5 Each of the Parties hereto hereby requests that this Court enter judgment

1 pursuant to this Consent Judgment and, in connection therewith, waive their right, if any, to a
2 hearing with respect to the entry of said judgment. In the event that this Court fails to enter the
3 Judgment on or before thirty days after filing of said Consent Judgment, then, upon notice by
4 any party hereto to the other party hereto, this Consent Judgment shall not be of any further
5 force or effect and the parties shall be restored to their respective rights and obligations as
6 though this Consent Judgment had not been executed by the parties.

7 **5. RESTITUTION AND RELIEF**

8 5.1 Plaintiff, a California corporation formed for the purpose of furthering
9 environmental causes, hereby waives its right to seek civil penalties in consideration for
10 Settling Defendant's settlement of this action, and ongoing compliance with Proposition 65.

11 5.2 Plaintiff expressly represents and warrants that it is a California corporation
12 formed for the specific purposes of: (a) protecting and educating the public as to the dangerous
13 and harmful products and activities of different companies, (b) encouraging members of the
14 public to become involved in issues effecting the environment and the enforcement of
15 environmental statutes and regulations including, but not limited to, Proposition 65 and (c)
16 instituting litigation to enforce the provisions of Proposition 65.

17 **6. ATTORNEY'S FEES AND COSTS**

18 6.1 Within 3 days following the entry of the Judgment, Settling Defendant shall
19 have paid to Plaintiff's counsel, for attorney's fees and costs, the sum of \$ 15,000 in a cashier's
20 check made payable to "Graham & Martin, LLP."

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

22 7.1 Entry of judgment by the Court pursuant to this Consent Judgment, *inter alia*:
23 (i) Constitutes full and fair adjudication of all claims against Settling
24 Defendant, including, but not limited to, any claims based upon alleged violations of the Toxic
25 Enforcement Act (Health & Safety Code Section 25249.5, et seq, also known as the Safe
26 Enforcement Act (Health & Safety Code Section 25249.5, et seq, also known as the Safe
27 Enforcement Act (Health & Safety Code Section 25249.5, et seq, also known as the Safe
28 Enforcement Act (Health & Safety Code Section 25249.5, et seq, also known as the Safe

Drinking Water and Toxic Enforcement Act of 1986 and also as Proposition 65), or any other statute, provision of common law or any theory or issue which arose from the alleged failure to provide warning of exposure to the Noticed Chemicals referred to in paragraph 1.2 and which may contain chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm; and

(ii) Bars any and all other persons from prosecuting against any releasee any claim, including, but not limited to, any claims based upon alleged violations of the Toxic Enforcement Act (Health & Safety Code Section 25249.5, et seq, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and also as Proposition 65), or any other statute, provision of common law or any theory or issue which arose from the alleged failure to provide warning of exposure to the Noticed Chemicals referred to in paragraph 1.4 and which may contain chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm.

8. CONFIDENTIALITY

8.1 The Parties agree that the terms of this Consent Judgment shall to the greatest extent possible be confidential and maintained in the strictest confidence, and that no Party hereto shall in the future disclose, to anyone not a Party to this Consent Judgment whether orally or in writing, the terms or existence of this Consent Judgment, provided that such restrictions shall not apply to (i) any necessary Court filing of this Consent Judgment, (ii) the Parties' disclosure to their attorneys, advisors or accountants for tax purposes or (iii) the Parties' disclosure as may be required by law (e.g. tax reporting, regulatory requirements (including reporting requirements to the Office of the Attorney General - Proposition 65 Enforcement), securities laws) or as may be necessary to enforce this Consent Judgment. Any Party, if asked about the Lawsuit or the matters giving rise to it, shall state, in substance, the following:

"The case has been settled and the Parties have agreed that the terms of the settlement are confidential."

By their signature approving this Consent Judgment, the respective attorneys for the Parties agree that the terms of this Consent Judgment shall be confidential and maintained in the strictest confidence.

9. DISPUTES UNDER THE CONSENT JUDGMENT

9.1 In the event that a dispute arises with respect to either party's compliance with the terms of this Consent Judgment, the Parties shall meet, either in person or by telephone, and endeavor to resolve the dispute in an amicable manner. No action may be taken to enforce the provisions of the Judgment in the absence of such a good faith effort to resolve the dispute prior to the taking of such action. In the event that legal proceedings are initiated to enforce the provisions of the Judgment, however, the prevailing party in such proceeding may seek to recover its costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing or accepting during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action provided that the party's amenability shall have been confirmed in a writing dispatched to the other party no later than five business days after the parties have concluded the process by which they have met.

10. Notices

10.1 Any and all notices between the parties provided for or permitted under this Consent Judgment, or by law, shall be in writing and shall be deemed duly served:

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

1 this paragraph, on the date of the transmission of that facsimile; or

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

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

7 (a) If to Settling Defendant:
8 Alvin T. Levitt, Esq.
9 Steefel, Levitt & Weiss, a P.C.
10 One Embarcadero, 30th Floor
11 San Francisco, California 94111

12 (b) If to Plaintiff:
13 Anthony G. Graham
14 Graham & Martin LLP
15 950 South Coast Drive, Suite 220
16 Costa Mesa, California 92626

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

19 11. INTEGRATION

20 11.1 This Consent Judgment constitutes the final and complete agreement of the
21 parties hereto with respect to the subject matter hereof and supersedes all prior or
22 contemporaneous negotiations, promises, covenants, agreements or representations concerning
23 any matters directly, indirectly or collaterally related to the subject matter of this Consent
24 Judgment. The Parties hereto have expressly and intentionally included in this Consent
25 Judgment all collateral or additional agreements which may, in any manner, touch or relate to
26 any of the subject matter of this Consent Judgment and, therefore, all promises, covenants and
27 agreements, collateral or otherwise, are included herein and therein. It is the intention of the
28 parties to this Consent Judgment that it shall constitute an integration of all their agreements,

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

5 **12. TIME**

6 12.1 Time is of the essence in the performance of the terms hereof.

7 **13. COUNTERPARTS**

8 13.1 This Consent Judgment may be signed in counterparts and shall be binding upon
9 the parties hereto as if all of said parties executed the original hereof.
10

11 **14. WAIVER**

12 14.1 No waiver by any party hereto of any provision hereof shall be deemed to be a
13 waiver of any other provision hereof or of any subsequent breach of the same or any other
14 provision hereof.

15 **15. AMENDMENT**

16 15.1 This Consent Judgment cannot be amended or modified except by a writing
17 executed by the parties hereto which expresses, by its terms, an intention to modify this
18 Consent Judgment.
19

20 **16. SUCCESSORS**

21 16.1 This Consent Judgment shall be binding upon and inure to the benefit of, and be
22 enforceable by, the parties hereto and their respective administrators, trustees, executors,
23 personal representatives, successors and permitted assigns.
24

25 **17. CHOICE OF LAWS**

26 17.1 Any dispute regarding the interpretation of this Consent Judgment, the
27 performance of the parties pursuant to the terms of this Consent Judgment, or the damages
28 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.

1 **18. NO ADMISSIONS**

2 18.1 This Consent Judgment has been reached by the parties to avoid the costs of
3 prolonged litigation and to ensure that the objectives of Proposition 65 are expeditiously carried
4 out. By entering into this Consent Judgment, no party admits any issue of fact or law, including
5 any violations of Proposition 65 or the Unfair Competition Act. The settlement of claims
6 herein shall not be deemed to be an admission or concession of liability or culpability by any
7 party, at any time, for any purpose. Neither this Consent Judgment, nor any document referred
8 to herein, nor any document referred to herein, nor any action taken to carry out this Consent
9 Judgment, shall be construed as giving rise to any presumption or inference of admission or
10 concession by Settling Defendant as to any fault, wrongdoing or liability whatsoever. Neither
11 this Consent Judgment, nor any of its terms or provisions, nor any of the negotiations or other
12 proceedings connected with it, nor any other action taken to carry out this Consent Judgment,
13 by any of the parties hereto, shall be referred to, offered as evidence, or received in evidence in
14 any pending or future civil, criminal or administrative action or proceeding, except in a
15 proceeding to enforce this Consent Judgment, to defend against the assertion of the Released
16 Claims or as otherwise required by law.

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20 **19. REPRESENTATION**

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

26
27 **20. AUTHORIZATION**

28 20.1 Each of the signatories hereto certifies that he or she is authorized by the party

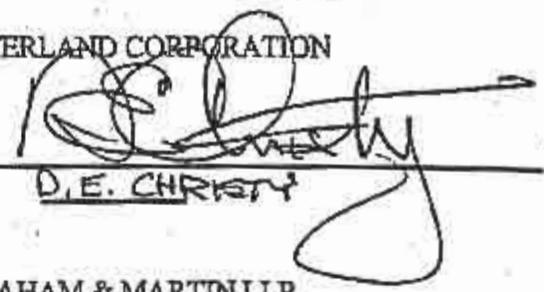
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he or she represents to enter into this Consent Judgment, to stipulate to the Judgment, and to execute and approved the Judgment on behalf of the party represented.

Dated: June 30, 2005

INTERLAND CORPORATION

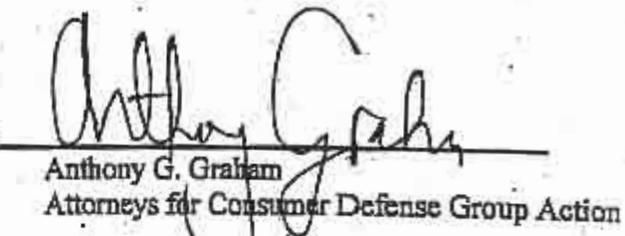
By


D.E. CHRISTY

Dated: June 30, 2005

GRAHAM & MARTIN LLP

By


Anthony G. Graham
Attorneys for Consumer Defense Group Action

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

Dated: 7/1, 2005

FELISA JILLY
JUDGE OF THE SUPERIOR COURT
PRO TEM

EXHIBIT A

Interland

Autumn Ridge Apartments
6011 Shadow Lane
Citrus Heights, CA 95621

Tanglewood Apartments
1880 Cowell Blvd.
Davis, CA 95616

Folsom Ranch Apartments
1000 Folsom Ranch Dr.
Folsom, CA 95630

Iron Point
1550 Iron Point Road
Folsom, CA 95630

The Carlyle
4500 Carlyle Court
Santa Clara, CA 95054

Amherst Place
1019 Dornajo Way
Sacramento, CA 95825

Fairlake Apartments
1100 Howe Ave.
Sacramento, CA 95825

The Park at Pointwest
1481 Exposition Blvd.
Sacramento, CA 95815

Woodside Oaks
506 Woodside Oaks Lane
Sacramento, CA 95825

Bella Vista Luxury Apartments
1500 Vista Club Circle
Santa Clara, CA 95054

Nantucket Apartments
1600 Nantucket Circle
Santa Clara, CA 95054

Rosemeade Apartments
1451 Rocky Ridge Drive
Roseville, Ca. 95661

EXHIBIT B

WARNING:

**This Area Contains Chemicals
Known To The State Of
California To Cause Cancer and
Birth Defects Or Other
Reproductive Harm.**

**More Information On Specific
Exposures Has Been Provided
To Tenants And Is Available At
[www.prop65apt.org].**

EXHIBIT C

WARNING

**This Area Contains Chemicals
Known To The State Of California
To Cause Cancer and Birth Defects
Or Other Reproductive Harm.**

California Health & Safety Code Section 25249.6

EXHIBIT D

Sources of Chemical Exposures

California's Proposition 65 has identified hundreds of chemicals known to the State of California to cause cancer, and/or birth defects or other reproductive harm. The law requires that businesses with 10 or more employees warn you prior to knowingly and intentionally exposing you to any of these chemicals when the exposure is over a certain level. While many exposures are associated with industrial activities and chemicals, everyday items and even the air we breathe routinely contain many of these chemicals. This brochure provides warning and information regarding exposures to these chemicals that occur in this facility. In many instances, we do not have information specific to this facility. Instead we have relied upon experts in this field to tell us where and to which chemicals these exposures might occur. For other exposures to listed chemicals, enough is known to identify specific areas of exposure.

The regulations implementing Proposition 65 offer warnings for various circumstances. Some of those warnings you may see in this residential rental property include the following:

General - Warning: This Facility Contains Chemicals Known to the State of California To Cause Cancer, Acid Birth Defects Or Other Reproductive Harm.

Foods and Beverages - Warning: Chemicals Known To the State of California To Cause Cancer, Or Birth Defects Or Other Reproductive Harm May Be Present In Foods Or Beverages Sold Or Served Here.

Alcohol - Warning: Drinking Distilled Spirits, Beer, Coolers, Wine, And Other Alcoholic Beverages May Increase Cancer Risk, And, During Pregnancy, Can Cause Birth Defects.

California's Proposition 65 Warning

California's Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986) requires businesses with 10 or more employees to provide warnings prior to exposing individuals to chemicals known to the State to cause cancer, and/or birth defects or other reproductive harm.

These types of chemicals are found within this establishment. This brochure provides you with information on what chemicals are present and what your exposures to them might be.

CALIFORNIA APARTMENT ASSOCIATION

980 Ninth Street, Suite 200

Sacramento, CA 95814

(916) 447-7881

(800) 967-4222 - toll-free phone

(877) 999-7881 - toll-free fax

<http://www.ca-apartment.org>

JMBM LOGO

The law firm of Jeffer, Maogels Butler & Marmaro LLP assisted in preparing this brochure. For more information about JMBM go to www.jmbm.com or call (310) 203-8080 or (415) 398-8080.

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Warning

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

Paint and Painted Surfaces.

Certain paints and painted surfaces contain chemicals, such as lead and crystalline silica, that are known to the State of California cause cancer, and/or birth defects or other reproductive harm. Lead-based paint chips may be ingested and crystalline silica may be released into the air and lead to exposures

Engine Related Exposures.

The operation and maintenance of engines, including automobiles, vans, maintenance vehicles, recreational vehicles, and other small internal combustion engines are associated with this residential rental facility. Motor vehicle rental fuels and engine exhaust contain many Proposition 65-listed chemicals, including benzene, carbon monoxide and, for diesel engines, diesel exhaust, which are known to the State to cause cancer, and/or birth defects or other reproductive harm. In parking structures and garages, exhaust fumes can concentrate, increasing your exposure to these chemicals.

Pest Control and Landscaping.

Pests control and landscaping products used to control insects and weeds contain resmethrin, mycobutanol, trifluralin and arsenic trioxide which are known to the State to cause cancer and/or birth defects or other reproductive harm.

Construction and Maintenance Materials.

Construction and maintenance materials contain Proposition 65-listed chemicals, such as roofing materials manufactured with vinyl chloride monomer, benzene and ceramic fibers, which are known to cause cancer, or birth defects or other reproductive harm. Construction materials used in walls, floors, ceilings and outside cladding contain chemicals, such as formaldehyde resin, asbestos, arsenic, cadmium and creosote, which are released as gases or vapors during normal degradation or deterioration, and as dust or particulate when disturbed during repairs, maintenance or renovation, all of which can lead to exposures.

Certain Products Used In Cleaning And Related Activities.

Certain cleaning products used for special cleaning purposes such as graffiti removal and spot and stain lifters contain chlorinated solvents including perchloroethylene and urinal odor cakes contain paradichlorobenzene which are Proposition 65-listed chemicals known to cause cancer or birth defects or other reproductive harm.

Swimming Pools and Hot Tubs.

The use and maintenance of a variety of recreational activities and facilities such as swimming pools and hot tubs where chlorine and bromine are used in the disinfecting process can cause exposures to chloroform and bromoform which are chemicals known to the State of California to cause cancer.

Second Hand Tobacco Smoke and Tobacco Products.

Tobacco products and tobacco smoke and its by-products contain many chemicals that are known to the State of California cause cancer, and birth defects or other reproductive harm. Smoking is permitted in certain common and private areas.

Furnishings, Hardware, and Electrical Components.

Room furnishings and building materials contain formaldehyde, which is known to the State of California cause cancer. Furniture, foams, brass keys, electrical power cords, carpeting, carpet padding, wall coverings, wood surfaces, and vinyl, contain a number of chemicals, including lead, and formaldehyde, known to cause cancer, and/or birth defects or other reproductive harm. Their presence in these materials can lead to exposures. Certain molds that may be present contain chemicals, including sterigmatocystin, known to the State of California to cause cancer.

Combustion Sources.

Combustion sources such as gas stoves, fireplaces, and barbeques contain or produce a large number of chemicals, including acetaldehyde, benzene and carbon monoxide, known to the State of California to cause cancer, and/or birth defects or other reproductive harm which are found in the air of this complex. Any time organic matter such as gas, charcoal or wood is burned, Proposition 65-listed chemicals are released into the air.