

VIA U.S. MAIL

Andrea Lyon
4440 Pacific Hwy
San Diego, CA 92110

Aztec Budget Inn
6050 El Cajon Blvd
San Diego, CA 92115-3813
ATTN: Andrea Lyon

Aztec Inn, LLP
4440 Pacific Highway
San Diego, CA 92110
ATTN: Rosemarie Lyon Masters

Lyon & Lyon, Inc.
4440 Pacific Highway
San Diego, CA 92110
ATTN: Rosemarie Lyon Masters

Rosemarie Lyon Masters
4440 Pacific Highway
San Diego, CA 92110

Lamplighter Inn, LLP
4440 Pacific Highway
San Diego, CA 92110
ATTN: Rosemarie Lyon Masters

Old Town Inn
4440 Pacific Highway
San Diego, CA 92110
ATTN: Rosemarie Lyon Masters

Best Western Lamplighter
6474 El Cajon Blvd.
San Diego, CA 92115
ATTN: Rosemarie Lyon Masters

April 5, 2002

RE: 60-DAY NOTICE OF INTENT TO SUE UNDER HEALTH & SAFETY CODE SECTION 25249.6

*This notice is given by Consumer Advocacy Group, Inc. 9899 Santa Monica Boulevard, # 225, Beverly Hills CA 90212. The noticing party must be contacted through the following entity: Reuben Yeroushalmi, Yeroushalmi & Associates; 3700 Wilshire Blvd. Ste. 480 Los Angeles CA 90010; 213-382-3183. (This Proposition 65 notice fully incorporates herein the contents and effects of the previous Proposition 65 notice sent to the noticed parties. As such, the allegations raised in the prior notices further enhance the ones made herein). This letter constitutes notification that Consumer Advocacy Group, Inc. believes and alleges that Proposition 65, *The Safe Drinking Water and Toxic Enforcement Act* (commencing with Health & Safety Code Section 25249.5) and California Code of Regulations, title 22, section 12601 have been violated by the following company(s) and/or entity(s) (hereinafter, "the violators") and during the time period referenced below:*

*Andrea Lyon
Aztec Budget Inn
Aztec Inn, LLP
Lyon & Lyon, Inc.
Rosemarie Lyon Masters
Lamplighter Inn, LLP
Old Town Inn
Best Western Lamplighter*

From: 4/5/98 PERIOD OF VIOLATION
Through 4/5/02 And continuing thereafter.

OCCUPATIONAL EXPOSURES

While in the course of doing business, each and every day, at the following geographical location(s):

See The Location of The Source of The Exposure on the attached Exhibit A

during the time period referenced above, the violators have been and are *knowingly and intentionally* exposing certain employees of the violators (*see* detailed description below) to **tobacco smoke** and its constituent chemicals as listed below and designated by the State of California to cause cancer and reproductive toxicity, pursuant to California Code of Regulations, title 22, section 12000, *without first giving clear and reasonable warning* of that fact to the exposed employee (Health & Safety Code Section 25249.6).

The source of exposure includes **tobacco smoke** and its constituent chemicals as listed below at *the location of the source of the exposure on the attached Exhibit A*. Specifically, the exposure to certain employees (*see* detailed

description of employees below) took place in the following areas: in areas and rooms designated for smoking; in the lobbies, hallways, and indoor/outdoor corridors that are adjacent or nearby or on the floors where rooms or areas designated for smoking (hereinafter, "rooms or areas designated for smoking" or its equivalent refers to areas where smoking has been permitted by the violators) are geographically located at *the location of the source of the exposure on the attached Exhibit A*. The **employees exposed** to the said chemicals at such location(s) include, but are not limited to, the employees corresponding to the following ***description of the occupations and types of tasks performed***:

- **Certain employees entering *guest rooms designated for smoking and/or areas designated for smoking, where smoking has been or is occurring by smokers***:
Such employees include: (1) violators' cleaning personnel (who clean and prepare the guest rooms, e.g., change towels & bed sheets, etc.), bell boys (who deliver or pickup customers' luggage), room service personnel (who deliver and pickup room service items), and repair/maintenance personnel (who repair or service appliances and other damages in the said rooms), who enter the guest rooms designated for smoking; (2) *any* employees, regardless of the employees' occupation and job task (e.g., *see* description of occupations and tasks mentioned above), who have been and are entering or passing through *other areas/rooms designated for smoking* including, but not limited to, outdoor entrances, outdoor corridors, other areas, where smoking is permitted by the violators, and where smoking has been and is occurring.
- **Certain employees entering or passing through lobbies, hallways, and corridors, where such areas are affected by smoke that permeates, migrates, and travels from nearby or adjacent areas and rooms designated for smoking**:
Such employees include: (1) reasonably foreseeable employees (i.e., *see* description of occupations and tasks mentioned above), who pass through or enter lobbies, hallways, and corridors (that are nearby or adjacent to or on the floor where areas or rooms designated for smoking are located), and where such areas are affected by the ***tobacco smoke*** (that originates from rooms and areas designated for smoking) which permeates, migrates, and travels through the openings of doors and windows and through other structural openings of the areas/rooms designated for smoking into the said lobbies, hallways, and corridors.

In the above-mentioned location(s) and areas/rooms designated for smoking by the violators, smoking has been and is occurring in the said location(s) and areas/rooms by room guests registered at rooms designated for smoking and by smokers at *other areas designated for smoking*. As such, certain employees described above have been and are being exposed to ***tobacco smoke*** resulting from smoking that has been or is occurring at the violators' premises, in the manner elaborated above. Therefore, the violators have been and are unlawfully exposing the above-mentioned exposed employees to ***tobacco smoke*** and its constituent chemicals as listed below and designated by the State of California to cause **cancer and reproductive toxicity**, pursuant to California Code of Regulations, title 22, section 12000, because the violators *failed to first give clear and reasonable warning* of that fact to the exposed employees described above (Health & Safety Code Section 25249.6).

The *route* of exposure for Occupational Exposures to the chemicals listed below, by the exposed employees described above, have been and are from ***tobacco smoke*** (in the smoke designated areas/rooms and affected areas as describe-above) through inhalation, meaning that ***tobacco smoke*** has been and is being breathed in via the ambient air by the exposed persons causing inhalation contact with their mouths, throats, bronchi, esophagi, and lungs. The exposure of ***tobacco smoke*** and its constituent chemicals as listed below to the mouths, throats, bronchi, esophagi, and lungs predictably generate risks of **cancer and reproductive toxicity** to the exposed employees described above.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a.) the conduct of manufacturers occurring outside the State of California; and (b.) employers with less than 10 employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires

that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

ENVIRONMENTAL EXPOSURES

While in the course of doing business, each and every day, at the following geographical location(s):

See The Location of The Source of The Exposure on the attached Exhibit A

during the time period referenced above, the violators have been and are *knowingly and intentionally* exposing certain persons and the public (*see* detailed description below) to **tobacco smoke** and its constituent chemicals as listed below and designated by the State of California to cause **cancer and reproductive toxicity**, pursuant to California Code of Regulations, title 22, section 12000, *without first giving clear and reasonable warning* of that fact to such persons and the public (Health & Safety Code Section 25249.6).

The *source* of exposure includes **tobacco smoke** and its constituent chemicals as listed below at *the location of the source of the exposure on the attached Exhibit A*. Specifically, the exposure to certain persons including, but not limited to, the violators' customers, room guests, and visitors (*see* further detailed description below) took place in the following areas: in areas and rooms designated for smoking; in the lobbies, hallways, and indoor/outdoor corridors that are adjacent or nearby or on the floors where rooms or areas designated for smoking (hereinafter, "rooms or areas designated for smoking" or its equivalent refers to areas where smoking has been permitted by the violators) are geographically located at *the location of the source of the exposure on the attached Exhibit A*. The **persons exposed** to the said chemicals at the said location(s) include, but are not limited to, the reasonably foreseeable persons corresponding to the following **type of persons exposed at common characteristics of facilities or sources of exposure**:

- **Certain persons entering guest rooms designated for smoking and/or areas designated for smoking, where smoking has been or is occurring by smokers:**

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

- **Certain persons entering or passing through lobbies, hallway, and corridors, where such areas are affected by smoke that permeates, migrates, and travels from nearby or adjacent areas and rooms designated for smoking:**

Such persons include: (1) reasonably foreseeable persons (i.e., the violators' customers, room guests, visitors of customers and room guests, and aforementioned delivery persons), who pass through or enter lobbies, hallway, and corridors (that are nearby or adjacent to or on the floor where areas or rooms designated for smoking are located), and where such areas are affected by the **tobacco smoke** (that originates from rooms and areas designated for smoking) which permeates, migrates, and travels through the openings of doors and windows and through other structural openings of the rooms and areas designated for smoking into the said lobbies, hallway, and corridors.

In the above-mentioned location(s) and areas/rooms designated for smoking by the violators, smoking has been and is occurring in the said location(s) and areas/rooms by room guests registered at rooms designated for smoking and by smokers at *other areas designated for smoking*. As such, certain persons described above have

been and are being exposed to **tobacco smoke** resulting from smoking that has been or is occurring at the violators' premises, in the manner elaborated above. Therefore, the violators have been and are unlawfully exposing the above-mentioned exposed persons to **tobacco smoke** and its constituent chemicals as listed below and designated by the State of California to cause **cancer and reproductive toxicity**, pursuant to California Code of Regulations, title 22, section 12000, because the violators *failed to first give clear and reasonable warning* of that fact to the exposed persons described above (Health & Safety Code Section 25249.6).

The *route* of exposure for Environmental Exposures to the chemicals listed below, by the exposed persons described above, have been and are from **tobacco smoke** (in the smoke designated areas/rooms and affected areas as describe-above) through inhalation, meaning that **tobacco smoke** has been and is being breathed in via the ambient air by the exposed persons causing inhalation contact with their mouths, throats, bronchi, esophagi, and lungs. The exposure of **tobacco smoke** and its constituent chemicals as listed below to the mouths, throats, bronchi, esophagi, and lungs predictably generate risks of **cancer and reproductive toxicity** to the exposed persons described above.

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

TOBACCO SMOKE **CARCINOGENS**

(4-Aminodiphenyl)	Arsenic (inorganic arsenic compounds)	Dibenz[a,h]anthracene	N-Nitrosodiethylamine
1, 1 -Dimethylhydrazine (UDMH)	Benz[a]anthracene	Dibenz[a,j]acridine	N-Nitrosodi-n-butylamine
1,3-Butadiene	Benzene	Dibenzo[a,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

1. Old Town Inn, 4440 Pacific Highway, San Diego, CA 92110
2. Aztec Budget Inn, 6050 El Cajon Blvd., San Diego, CA 92115
3. Best Western Lamplighter, 6474 El Cajon Blvd., San Diego, CA 92115

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, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the following:

Clear and Reasonable Warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees.. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals

exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

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.

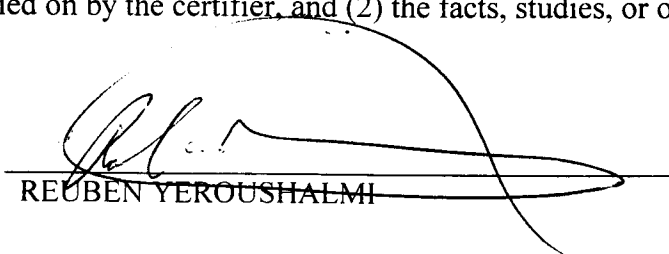
CERTIFICATE OF MERIT

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 YEROUSHALMI

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: 4/9/2002 Place of Mailing: Los Angeles, CA

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

▽

Alleged Violators

Andrea Lyon 4440 Pacific Hwy San Diego, CA 92110
Lyon & Lyon, Inc. 4440 Pacific Highway San Diego, CA 92110 ATTN: Rosemarie Lyon Masters
Old Town Inn 4440 Pacific Highway San Diego, CA 92110 ATTN: Rosemarie Lyon Masters

Aztec Budget Inn 6050 El Cajon Blvd San Diego, CA 92115-3813 ATTN: Andrea Lyon
Rosemarie Lyon Masters 4440 Pacific Highway San Diego, CA 92110
Best Western Lamplighter 6474 El Cajon Blvd. San Diego, CA 92115 ATTN: Rosemarie Lyon Masters

Aztec Inn, LLP 4440 Pacific Highway San Diego, CA 92110 ATTN: Rosemarie Lyon Masters
Lamplighter Inn, LLP 4440 Pacific Highway San Diego, CA 92110 ATTN: Rosemarie Lyon Masters

▽

Government Agencies

Office of the Attorney General P.O. BOX 70550 Oakland, CA 94612-0550
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San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101
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San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803

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

Dated: 4/9/2002

By: Brian Keith Andrews
Brian Keith Andrews