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60 Day Notice of Intent to Sue Marie Callender Pie Shop, Inc. And Castle Harlan, Inc. Under Health & Safety Code Section 25249.6

This letter constitutes notification that Marie Callender Pie Shop, Inc. and Castle Harlan, Inc. (hereinafter referred to collectively as "the Violator") has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5). This notice is given by the Consumer Defense Group Action, Inc. (hereinafter "Consumer Defense Group"), which may be contacted through the following entity: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

Summary of Violation:

Proposition 65 requires that when a party, such as the Violator, has been and is knowingly and intentionally exposing its customers, the public and/or its employees to chemicals designated by the State of California to cause cancer and reproductive toxicity ("the Designated Chemicals") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons (Health & Safety Code Section 24249.6). Mercury, mercury compounds, methyl mercury and methyl mercury compounds are Designated Chemicals. Methyl mercury compounds were listed under Proposition 65 as a chemical known to the State of California to cause cancer on May 1, 1996. Methyl mercury was listed as a chemical known to the State of California to cause reproductive toxicity on July 1, 1987. Mercury and mercury compounds were listed as chemicals known to the State of California to cause reproductive toxicity on July 1, 1987. 22 CCR § 12000.

The Violator owns and/or operates the "Marie Callender" chain of restaurants which operate at each of the facilities listed on Exhibit A to this Notice (hereinafter referred to collectively as "the Facilities"). In the ordinary course of business, the Violator sells food for consumption by its customers. One of the foods it sells and serves are various kinds of fish in the form of meals containing albacore tuna and cod, as well as flounder, catfish, salmon, trout, grouper, haddock and swordfish (hereinafter referred to collectively as "Fish"). Fish contains mercury, mercury compounds, methyl mercury and methyl mercury compounds.

At the "Marie Callender" restaurants listed on Exhibit A the Violator serves on a daily basis albacore tuna in the form of a "tuna stack" sandwich, and cod in the form of "fish and chips." The Violator also serves as part of its "Catch of the Day" flounder, catfish, salmon, trout, grouper, haddock and swordfish. Each of these Fish contains mercury, mercury compounds, methyl mercury and methyl mercury compounds. Customers and employees are exposed to these Designated Chemicals when they ingest the Fish by eating it in the form of the meals delineated above.

The Violator knows or has known since at least July 1, 1988 that the Fish served at the restaurants it owns and/or operates contain methyl mercury; since May 1, 1997 that the Fish contain methyl mercury compounds; and since July 1, 1991 that the Fish contain mercury and mercury compounds, and that persons eating the Fish are exposed to these chemicals.

Although the Violator has chosen to allow its customers and employees to be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish, the Violator has specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds.

Investigators for the Consumer Defense Group have conducted an investigation of the Facilities between December 3, 2002 and February 6, 2003 (the "Investigation Period"). During those investigations the Consumer Defense Group discovered that the properties are owned and/or operated by the Violator. Further, the Consumer Defense Group discovered that the Violator has more than nine employees, and not only permits but requires the preparation and sale of Fish at each of the Facilities. Finally, the investigators for the Consumer Defense Group saw that at none of the Facilities during the Investigation Period was there a clear and reasonable warning sign at the front entrances, inside the Facilities at the reception area, or on the menus in use at the Facilities.

Product Exposures:

While in the course of doing business, at the locations in the attached Exhibit A, from at least the period between December 3, 2002 and February 6, 2003, the Violator has been and is knowingly and intentionally exposing its customers and employees to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish in the form as delineated above, without providing a clear and reasonable warning at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. The source of exposures is the Fish prepared and offered for sale at each of the Facilities. The exposure takes place when the customers and/or employees ingest the Fish at the Facilities.

Environmental Exposures:

While in the course of doing business, at the locations in the attached Exhibit A, from at least the period between December 3, 2002 and February 6, 2003, the Violator has been and is knowingly and intentionally exposing its customers and employees to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish in the form as delineated above, without providing a clear and reasonable warning at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. The source of exposures is the Fish prepared and offered for sale at each of the Facilities. The exposure takes place when the customers and/or employees ingest the Fish at the Facilities.

Occupational Exposures:

While in the course of doing business, at the locations in the attached Exhibit A, from at least the period between December 3, 2002 and February 6, 2003, the Violator has been and is knowingly and intentionally exposing its employees to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish in the form as delineated above, without providing a clear and reasonable warning at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. The source of exposures is the Fish prepared and offered for sale at each of the Facilities. The exposure takes place when the employees ingest the Fish at the Facilities. Employees include and are not limited to bartenders, cashiers, waiters, waitresses, cooks, service personnel and administrative personnel. Such exposures take place inside the Facilities when and where meals containing Fish are consumed.

The route of exposure for Product, Occupational and Environmental Exposures to the Designated Chemicals has been ingestion, that is via the eating of the Fish contained in the meals delineated above.

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

Dated: February 10, 2003

By:

EXHIBIT A

1. ANAHEIM PLAZA #80
540 N. Euclid Ave., Anaheim, CA 92801
2. ANAHEIM HILLS #83
5711 E. La Palma Ave., Anaheim, CA 92807
3. ARCADIA #15
820 S. Baldwin Ave., Arcadia, CA 91007
4. AUBURN #222
110 Grass Valley Highway, Auburn, CA 95603
5. AZUSA #63
1175 E. Alostia Ave., Azusa, CA 91702
6. BAKERSFIELD #73
3801 California Avenue, Bakersfield, CA 93309
7. BAKERSFIELD #182
2631 Oswell Street, Bakersfield, CA 93306
8. BUENA PARK #50
5960 Orangethorpe Avenue, Buena Park, CA 90620
9. CAMARILLO #91
185 E. Daily Drive, Camarillo, CA 93010
10. CAPITOLA #224
3400 Clares Street, Capitola, CA 95010
11. CARLSBAD #88
5980 Avenida Encinas, Carlsbad, CA 92008
12. CHICO #213
1910 East 20th Street, Chico, CA 95928
13. CHINO #226
5455-A Philadelphia Street, Chino, CA 91710
14. CHULA VISTA #103
330 "F" Street, Chula Vista, CA 91910

15. CITRUS HEIGHTS #79
525 Sunrise Boulevard, Citrus Heights, CA 95610
16. CITY OF INDUSTRY #124
1560 Albatross Road, City of Industry, CA 91748
17. CLAREMONT #45
1030 W. Foothill Boulevard, Claremont, CA 91711
18. CONCORD #86
2090 Diamond Boulevard, Concord, CA 94520
19. CORONA #89
160 E. Rincon St., Corona, CA 91720
20. CORONADO #138
1300 Orange Avenue, Coronado, CA 92118
21. COSTA MESA #10
353 E. 17th Street, Costa Mesa, CA 92627
22. CUPERTINO #42
20750 Stevens Creek Boulevard, Cupertino, CA 95014
23. DOWNEY #9
7860 E. Florence Avenue, Downey, CA 90240
24. EL TORO #46
23662 El Toro Road, Lake Forest, CA 92630
25. ELK GROVE #236
9134 E. Stockton Boulevard, Elk Grove, CA 95758
26. ENCINITAS #208
162 S. Rancho Santa Fe Road, #C-10, Encinitas, CA 92024
27. ESCONDIDO #66
515 W, 13th Street, Escondido, CA 92025
28. EUREKA #252
3502 Broadway, Eureka, CA 95501
29. FAIRFIELD #149
1750 Travis Boulevard, Fairfield, CA 94533

30. FOUNTAIN VALLEY #47
18889 Brookhurst St., Fountain Valley, CA 92708
31. FRESNO #62
1781 E. Shaw Avenue, Fresno, CA 93710
32. FRESNO #229
3602 W. Shaw Avenue, Fresno, CA 93711
33. FRESNO #273
7825 N. Blackstone Avenue, Fresno, CA 93720
34. CALIFORNIA STATE UNIVERSITY, FULLERTON #231
Food Court - Student Union
2600 E. Nutwood Avenue, Fullerton, CA 92631
35. GARDEN GROVE #41
13252 Brookhurst Street, Garden Grove, CA 92843
36. GARDENA #142
15466 S. Western Avenue, Gardena, CA 90249
37. GLENDALE #64
707 N. Pacific Avenue, Glendale, CA 91203
38. HAYWARD #268
790 W. Winton Avenue, CA 94545-1517
39. HEMET #140
3969 W. Florida Avenue, Hemet, CA 92545
40. IRVINE #270
15363 Culver Drive, Irvine, CA 92604
41. LA HABRA #3
340 E. Whittier Boulevard, La Habra, CA 90631
42. LAKEWOOD #12
4419 Candlewood St., Lakewood, CA 90712
43. LANCASTER #130
1649 W. Avenue K, Lancaster, CA 93534

44. LOS ALTOS #30
4710 El Camino Real, Los Altos, CA 94022
45. LOS ANGELES - WILSHIRE #109
5773 Wilshire Boulevard, Los Angeles, CA 90036
46. LOS ANGELES - WEST #17
11324 National Boulevard, West Los Angeles, CA 90064
47. MARINA DEL REY #56
4356 Lincoln Boulevard, Marina Del Rey, CA 90292
48. MERCED #257
1435 "V" Street, Merced, CA 95341
49. MILPITAS #207
333 South Abbott Avenue, Milpitas, CA 95035
50. MODESTO #101
3500 Coffee Road, Modesto, CA 95355
51. MONTEBELLO #121
1852 Montebello Town Center, Montebello, CA 90640
52. MONTEREY #125
1200 Del Monte Circle, Monterey, CA 93940
53. MONTEREY PARK #81
220 S. Atlantic Boulevard, Monterey Park, CA 91754
54. MORGAN HILL #187
18599 Sutter Boulevard, Morgan Hill, CA 95037
55. NAPA #174
1990 Trower Avenue, Napa, CA 94558
56. NORTHRIDGE #61
19310 Business Center Drive, Northridge, CA 91324
57. ONTARIO #116
2149 Convention Center Way, Ontario, CA 91764
58. ORANGE - KATELLA #76
307 E. Katella Avenue, Orange, CA 92667

59. ORANGE #2
574 N. Tustin Avenue, Orange, CA 92867
60. ORANGE - A LA CARTE #178
1100 Town & Country Road, Suite 150, Orange, CA 92868
61. OXNARD #212
1600 Ives Avenue, Oxnard, CA 93050
62. PALM DESERT #152
72-840 Highway 111, Suite 399, Palm Desert, CA 92260
63. PASADENA #58
2300 E. Foothill Blvd., Pasadena, CA 91107
64. PISMO BEACH #134
2131 Price Street, Pismo Beach, CA 93449
65. PLACENTIA #48
26 E. Yorba Linda Boulevard, Placentia, CA 92870
66. RANCHO MIRAGE #59
69-830 Highway 111, Rancho Mirage, CA 92270
67. REDDING #136
1987 Hilltop Drive, Redding, CA 96002
68. REDLANDS #71
1625 Industrial Park Avenue, Redlands, CA 92374
69. REDONDO BEACH #23
2979 Artesia Boulevard, Redondo Beach, CA 90278
70. REDONDO BEACH #143
1223 Pacific Coast Highway, Redondo Beach, CA 90277
71. RIVERSIDE #5
3505 Merrill Street, Riverside, CA 92506
72. ROLLING HILLS #133
550 Deep Valley Drive, Rolling Hills, CA 90274
73. SACRAMENTO #18
3129 Arden Way, Sacramento, CA 95825

74. SACRAMENTO #43
5622 Freeport Boulevard, Sacramento, CA 95822
75. SALINAS #255
1391 N. Davis Road, Salinas, CA 93907
76. SAN BERNARDINO #52
800 E. Highland Avenue, San Bernardino, CA 92404
77. SAN DIEGO - BALBOA #22
5405 Balboa Ave., San Diego, CA 92111
78. SAN DIEGO - LA MESA #74
6950 Alvarado Road, San Diego, CA 92120
79. SAN DIEGO - CARMEL MTN. #254
11122 Rancho Carmel Drive, San Diego, CA 92128
80. SAN GABRIEL #28
518 Las Tunas Drive, San Gabriel, CA 91776
81. SAN JOSE #53
620 Blossom Hill Road, San Jose, CA 95123
82. SAN JOSE #39
2831 Meridian Avenue, San Jose, CA 95124
83. SAN JOSE #14
780 S. Winchester Boulevard, San Jose, CA 95128
84. SAN JUAN CAPISTRANO #84
31791 Del Obispo Street, San Juan Capistrano, CA 92675
85. SAN PEDRÓ #35
29051 S. Western Ave., San Pedro, CA 90732
86. SAN RAMON #246
18070 San Ramon Valley Blvd., San Ramon, CA 94583
87. SANTA ANA #40
1821 N. Grand Ave. Santa Ana, CA 92701
88. SANTA ANA #33
2530 S. Bristol Street, Santa Ana, CA 92704

89. SANTA BARBARA #173
120 Hope Street #F-27, Santa Barbara, CA 93105
90. SANTA MARIA #209
229 Town Center West, Santa Maria, CA 93454
91. SANTA ROSA #223
2460 Mendocino Avenue, Santa Rosa, CA 95403
92. SEAL BEACH #38
12489 Seal Beach Boulevard, Seal Beach, CA 90740
93. SERRAMONTE - DALY CITY #225
5B Serramonte Center, Daly City, CA 94015
94. SHERMAN OAKS #16
14743 Ventura Boulevard, Sherman Oaks, CA 91403
95. SIMI VALLEY #129
20 W. Cochran Street, Simi Valley, CA 93065
96. SOUTH LAKE TAHOE #145
3599 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150
97. STOCKTON #87
2628 March Lane, Stockton, CA 95207
98. SUNNYVALE #34
751 El Camino Real, Sunnyvale, CA 94087
99. TEMECULA #253
29363 Ranch California Rd., Temecula, CA 92591
100. TOLUCA LAKE #24
10050 Riverside Drive, Toluca Lake, CA 91602
101. TORRANCE #8
23365 Hawthorne Boulevard, Torrance, CA 90505
102. TORRANCE #92
21211 Hawthorne Boulevard, Torrance, CA 90503
103. VALENCIA #97
27630 The Old Road, Valencia, CA 91355

104. VENTURA #82
1295 S. Victoria Avenue, Ventura, CA 93003
105. VICTORVILLE #117
12180 Mariposa Road, Victorville, CA 92392
106. VISALIA #228
350 South Mooney Boulevard, Visalia, CA 93291
107. WALNUT CREEK #220
1101 S. California Boulevard, Walnut Creek, CA 94596
108. WESTCHESTER #20
7415 La Tijera Boulevard, Westchester, CA 90045
109. WEST COVINA #75
3117 E. Garvey Avenue N., West Covina, CA 91791
110. WESTLAKE VILLAGE #250
3635 E. Thousand Okas Blvd., Westlake Village, CA 91362
111. WESTMINSTER #139
16390 Beach Boulevard, Westminster, CA 92683
112. WHITTIER #36
12402 E. Washington Boulevard, Whittier, CA 90602
113. WHITTIER #78
9829 La Serna Drive, Whittier, CA 90605

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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

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

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

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

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger can demonstrate that a "significant amount" of the listed chemical does 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 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, 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 1209). A private party may not pursue an enforcement action directly on 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 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 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 be adequately tested as required (Health and Safety Code 25241).

Readers should note a chemical that already 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. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the U.S. Environmental Protection Agency. The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the first 200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

For purposes of this section, "one mouse" means oncogenicity in mice, "one rat" means oncogenicity in rats, "repro" means reproduction, "tera rodent" means teratogenicity in rodents, "tera rabbit" means teratogenicity in rabbits.

Chemical	Testing Needed
Bendiocarb	one rat, repro, tera rodent
Chloroneb	one rat, one mouse, repro, tera rodent, tera rabbit
PCP Petroleum distillates, aromatic	repro, one rat one rat, one mouse, repro, tera rodent, tera rabbit

(c) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Toxic Substances.

Under Section 4(a) of the Toxic Substances Control Act, testing of a chemical is required when that chemical may present an unreasonable risk, or is produced in substantial quantities and enters the environment in substantial quantities, or may have significant or substantial human exposure.

For purposes of this section, "tera" means teratogenicity, "tox" means reproductive toxicity, "onc" means oncogenicity.

Chemical	Testing Needed
Alkyl (C12-13) glycidyl ether	tox, tera
t-Amyl methyl ether	tox, tera
Bisphenol A diglycidyl ether	onc, tox
Cyclohexane*	tox, tera
Glycidyl methacrylate*	tera
1,6-Hexamethylene diisocyanate	tox, tera
N-Methylpyrrolidone	onc, tox, tera
Phenol	tox

* The Toxic Substances Control Act Section 4 health effects testing programs for cyclohexane and glycidyl methacrylate have been completed and the U.S. Environmental Protection Agency's review of the testing program data is currently underway.

(d) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Pesticide Programs

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires EPA to register pesticides based on data adequate to demonstrate that they will not result in unreasonable adverse effects to people or the environment when used in accordance with their EPA-approved labels.

In 1988, FIFRA was amended to strengthen EPA's pesticide regulatory authority and responsibilities to reregister pesticides registered prior to 1984 to ensure they meet today's stringent scientific and regulatory standards. Reregistration requires registrants to develop up-to-date data bases for each pesticide active ingredient. As part of the reregistration process, modifications may be made to registrations, labels or tolerances to ensure they are protective of human health and the environment. Also, reregistration reviews will identify any pesticides where regulatory action may be necessary to deal with unreasonable risks. EPA has been directed to accelerate the reregistration process so that the entire process is completed by 1997. The 1988 amendments set out a five-phase schedule to accomplish this task with deadlines applying to both pesticide registrants and the EPA. These amendments are requiring a substantial number of new studies to be conducted and old studies to be reformatted for EPA review to ensure they are adequate. EPA may, in the future, request additional data or information to further evaluate any concerns over the safety of pesticide products.

The chemicals listed below are those for which data are unavailable or inadequate to characterize oncogenicity, teratogenicity, or reproductive effects potential. For purposes of this section, "onc" means oncogenicity, "tera" means teratogenicity, and "repro" means reproductive toxicity.

Chemical	Data Requirements
Acrolein	onc, tera
Alkyl imidazolines	tera
Ametryn	repro, tera
4-Aminopyridine	onc, repro, tera
4-T-Amylphenol	onc, repro
Aquashade	onc, repro, tera
Bensulfide	onc, repro, tera
Benzisothiazolin-3-one	onc, repro, tera
Brodifacoum	repro
Bromonitrostyrene	tera
Busan 77	repro
Chlorfuretol methyl	tera
Chlorophacinone	tera
Chloropicrin	onc, repro
Chromated arsenicals	tera
Cyclonite	onc
Cypermethrin	onc, repro, tera
DCNA	repro, tera
Dibromodicyanobutane	tera
Diclofop-methyl	onc, tera
Dicrotophos	onc, repro
Dihaloalkylhydantoins	onc, repro, tera
Dimethopin	onc, repro, tera
Dimethyldithiocarbamate	onc, repro, tera
Dinocap and its compounds	tera
Diphacinone and salts	onc, repro, tera
Diphenylamine	onc, tera
Dipropyl isocinchonchonate	repro
Djurnin	onc

Chemical	Data Requirements
Dodine	one, repr, tern
Endothal and salts	one, repr, tern
Ethofumesate	one
Ethoxyquin	tern
Fenitrothion	tern
Fenvalerate	one, repr, tern
Fluralinate	repr, tern
Hydroxy-methylthiocarbamate	tern
Imazalil	one
Inorganic chlorates	one, repr, tern
Inorganic sulfates	one, repr, tern
Iodine-potassium iodide	tern
Iprodione	tern
Irgarol	one, repr, tern
Lampicide	one, repr
Magnesium phosphide	one
Malathion	one
Marsb	one, tern
MCPB and salts	tern
Mefenoxide and salts	tern
Mepiquat chloride	tern
Metaldahyde	one, tern
Methoxychlor	one, repr, tern
Methyl isothiocyanate	tern
Methyl parathion	tern
Methylthiocarbamate	repr
MGK 264	tern
Molinate	repr
Naphthalene	one
Naphthaleneacetic acid	one, repr
Naphtholate salts	tern
Napropamide	repr
Niclosamide	one, tern
Nicotine and derivatives	one, tern
Nitropryrin	one, repr, tern
4-Nitrophenol	one, repr, tern
Ocethlione	tern
Oil of Pennyroyal	tern
Oxadifos	one, repr, tern
Oxadiazon	repr
Oxyfluorfen	one
Pebulate	tern
Permethrin	tern
Phenmedipham	one
Phenol and salts	tern
2-Phenylphenol and salts	one, tern
Pine oils	tern
Piperonyl butoxide	tern
Poly (hexamethylene biguanide)	one, repr
Polyethoxylated aliphatic alcohols	one, repr, tern
Prometon	tern
Propachlor	one

Chemical	Data Requirements
Propenil	one, repr
Propeniphos	tern
Propiconazole	one
Propylene oxide	tern
Pyrazon	one, repr
Pyrethrin and derivatives	one, tern
Pyrimidinone	one, tern
Sethoxydic	one
Siduron	one, repr, tern
Sodium fluoride	tern
Sulfonate-estered yl	one, tern
TBT-containing compounds	one, tern
TCMB	one, repr, tern
Temphos	one, tern
Tetrachloroethylene	one
Tetraquat	one
Thiabendazole and salts	one, repr, tern
Thidiazuron	one, repr, tern
Thiodiazuron	tern
Thiophanate-methyl	one, tern
Thiram	one
Trindimeth	one, repr
Triolopy and salts	one
Vernolein	one, repr

Revised January 1, 1994

HISTORY

1. New section added to QAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 17).
2. Amendment submitted to QAL for printing only pursuant to Government Code section 11343.8 (Register 90, No. 2).
3. Amendment submitted to QAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 17).
4. Editorial correction to subsection (d) (Register 91, No. 31).
5. Editorial correction for printing error (Register 91, No. 43).
6. Editorial correction for including inadvertently omitted amendment. Submitted to QAL for printing only pursuant to Government Code section 11343.8 (Register 93, No. 2).
7. Editorial correction of printing errors (Register 93, No. 43).
8. Amendment of subsection (d) filed 8-1-94. Submitted to QAL for printing only pursuant to Government Code section 11343.8 (Register 94, No. 3).
9. Amendment of subsections (b), (c), and (d) filed 12-23-94. Submitted to QAL for printing only pursuant to Government Code section 11343.8 (Register 95, No. 1).
10. Amendment submitted to QAL for printing only pursuant to Government Code section 11343.8 (Register 95, No. 32).
11. Amendment filed 1-30-97; operative 1-30-97. Submitted to QAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 97, 1-30-97).
12. Amendment of subsections (b), (c) and (d) filed 2-13-98; operative 2-13-98. Submitted to QAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 98, No. 7).

[The next page...]

Animal bioassay data is admissible and general-
ly indicative of potential effects in humans.

For purposes of this regulation, substances are present occupationally when there is a possibility of exposure either as a result of normal work operations or a reasonably foreseeable emergency resulting from workplace operations. A reasonably foreseeable emergency is one which a reasonable person should anticipate based on usual work conditions, a substance's particular chemical properties (e.g., potential for explosion, fire, reactivity), and the potential for human health hazards. A reasonably foreseeable emergency includes, but is not limited to, spills, fires, explosions, equipment failure, rupture of containers, or failure of control equipment which may or do result in a release of a hazardous substance into the workplace.

(b) Administrative Procedure Followed by the Director for the Development of the Initial List. The Director shall hold a public hearing concerning the initial list. The record will remain open 30 days after the public hearing for additional written comment. Requests to exempt a substance in a particular physical state, volume, or concentration from the provisions of Labor Code sections 6390 to 6399.2 may be made at this time. If no comments in opposition to such a request are made at the public hearing or received during the comment period, or if the Director can find no valid reason why the request should not be considered, it will be incorporated during the Director's preparation of the list.

After the public comment period the Director shall formulate the initial list and send it to the Standards Board for approval. After receipt of the list or a modified list from the Standards Board, the Director will adopt the list and file it with the Office of Administrative Law.

(c) Concentration Requirement. In determining whether the concentration requirement of a substance should be changed pursuant to Labor Code section 6383, the Director shall consider valid and substantial evidence. Valid and substantial evidence shall consist of clinical evidence or toxicological studies including, but not limited to, animal bioassay tests, short-term in vitro tests, and human epidemiological studies. Upon adoption, a regulation indicating the concentration requirement for a substance shall consist of a footnote on the list.

(d) Procedures for Modifying the List. The Director will consider petitions from any member of the public to modify the list or the concentration requirements, pursuant to the procedures specified in Government Code section 11347.1. With petitions to modify the list, the Director shall make any necessary deletions or additions in accordance with the procedures herein set forth for establishing the list. The Director will review the existing list at least every two years and shall make any necessary additions or deletions in accordance with the procedures herein set forth for establishing the list.

(e) Criteria for Modifying the List. Petitions to add or remove a substance on the list, modify the concentration level of a substance, or reference when a particular substance is present in a physical state which does not pose any human health risk must be accompanied with relevant and sufficient scientific data which may include, but is not limited to, short-term tests, animal studies, human epidemiological studies, and clinical data. If the applicant does not include the complete content of a referenced study or other document, there must be sufficient information to permit the Director to identify and obtain the referenced material. The petitioner bears the burden of justifying any proposed modification of the list.

The Director shall consider all evidence submitted, including negative and positive evidence. All evidence must be based on properly designed studies for toxicological endpoints indicating adverse health effects in humans, e.g., carcinogenicity, mutagenicity, neurotoxicity, organ damage/effects.

For purposes of this regulation, animal data is admissible and generally indicative of potential effects in humans.

The absence of a particular category of studies shall not be used to prove the absence of risk.

wherein insensitivities, negative results must be reevaluated in light of the limits of sensitivity of each study, its test design, and the protocol followed.

In evaluating different results among proper tests, as a general rule, positive results shall be given more weight than negative results for purposes of including a substance on the list or modifying the list in reference to concentration, physical state or volume, so that appropriate information may be provided regarding those positive results. In each case, the relative sensitivity of each test shall be a factor in resolving such conflicts.

NOTE: Authority cited: Section 6380, Labor Code. Reference: Sections 6361, 6380, 6380.5, 6382 and 6383, Labor Code.

HISTORY

1. New article 5 (section 337) filed 11-5-81; effective thirtieth day thereafter (Register 81, No. 45).
2. Amendment of subsection (d) filed 1-15-87; effective upon filing pursuant to Government Code section 11346.2(d) (Register 87, No. 3).
3. Editorial correction of HISTORY 2. (Register 91, No. 19).

§ 338. Special Procedures for Supplementary Enforcement of State Plan Requirements Concerning Proposition 65.

(a) This section sets forth special procedures necessary to comply with the terms of the approval by the United States Department of Labor of the California Hazard Communication Standard, pertaining to the incorporation of the occupational applications of the California Safe Drinking and Toxic Enforcement Act (hereinafter Proposition 65), as set forth in 62 Federal Register 31159 (June 6, 1997). This approval specifically placed certain conditions on the enforcement of Proposition 65 with regard to occupational exposures, including that it does not apply to the conduct of manufacturers occurring outside the State of California. Any person proceeding "in the public interest" pursuant to Health and Safety Code § 25249.7(d) (hereinafter "Supplemental Enforcer") or any district attorney or city attorney or prosecutor pursuant to Health and Safety Code § 25249.7(e) (hereinafter "Public Prosecutor"), who alleges the existence of violations of Proposition 65, with respect to occupational exposures as incorporated into the California Hazard Communication Standard (hereinafter "Supplemental Enforcement Matter"), shall comply with the requirements of this section. No Supplemental Enforcement Matter shall proceed except in compliance with the requirements of this section.

(b) 22 CCR § 12903, setting forth specific requirements for the content and manner of service of sixty-day notices under Proposition 65, in effect on April 22, 1997, is adopted and incorporated by reference. In addition, any sixty-day notice concerning a Supplemental Enforcement Matter shall include the following statement:

"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 the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantial court orders in this matter must be submitted to the Attorney General.

(c) A Supplemental Enforcer or Public Prosecutor who commences Supplemental Enforcement Matter shall serve a file-endorsed copy of the complaint upon the Attorney General within ten days after filing the Complaint.

(d) A Supplemental Enforcer or Public Prosecutor shall serve upon the Attorney General a copy of any motion, or opposition to a motion

CERTIFICATE OF MERIT

I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing plaintiff Consumer Defense Group Action, Inc. (hereinafter "Consumer Defense Group", the "noticing party" as to the "60 Day Notice of Intent to Sue" (the "Notice") served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have consulted with Andrew Brach and other toxicologists with Komex International, which is an international, full-service environmental consulting company providing leading-edge technology and innovative solutions to industries and governments worldwide. Komex has more than twenty years of industry experience and a depth of professional expertise in every aspect of environmental sciences and provides economical solutions to environmental problems worldwide. The clients of Komex range from small independent owners to multinational corporations, governments and international development agencies. The toxicologists at Komex, including Dr. Brach, have relevant and appropriate experience and expertise, and have reviewed the facts as set forth below regarding the exposure to the listed chemicals (mercury, mercury compounds, methyl mercury and methyl mercury compounds) set forth in the attached Notice.

3. 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.

4. The information referred to in paragraph 3 is as follows; by investigation of the locations referenced in the Notice plaintiff discovered that:

- (1) the violator owns and/or operates the specific subject property ("operate" in this context means controls the use of the property, and/or its management, and/or the decision as to whether to permit the serving of the specified food at that facility);
- (2) the violator has more than nine employees;
- (3) the violator permits the serving of the specified food at the locations referenced in the Notice;
- (4) as to the locations referenced in the Notice, Plaintiff examined the major entrances to the facilities, the reception area and the menus in use at the facilities;
- (5) at none of the locations did Plaintiff see any sign purporting to comply with the requirements of Proposition 65.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Irvine, California on February 7, 2003.

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 3 Park Plaza, Suite 2030, Irvine, California 92614.

I SERVED THE FOLLOWING:

- 1.) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 24249.6 and Certificate of Merit;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to Violator*);
- 3.) Supporting documents for Certificate of Merit (only sent to Office of Attorney General, Office of Proposition 65 Enforcement).;

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: February 10, 2003

Place of Mailing: Irvine, California

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

Phillip Ratner, President and CEO
Marie Callender Pie Shop, Inc.
27081 Aliso Creek Road
Aliso Viejo, CA 92656

John M. Harlan, President
Castle Harlan, Inc.
150 East 58th Street
New York, NY 10155

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

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

Sacramento County DA
P.O. Box 749
Sacramento, CA 95812

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

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

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

San Mateo District Attorney
1050 Mission Road
South San Francisco, CA 94080

Riverside County DA
4075 Main St., 1st Fl.
Riverside, CA 92501

Sonoma County DA
600 Administrative Dr.
Santa Rosa, CA 95403

San Jose City Attorney
151 W. Mission St.
San Jose, CA 95110

El Dorado County DA
1360 Johnson Blvd. #105
South Lake Tahoe, CA 96150

Napa County DA
931 Parkway Mall
Napa, CA 94559

Inyo County DA
386 W. Line Street
Bishop, CA 93514

Lake County DA
255 N. Forbes St.
Lakeport, CA 95453

Yuba County DA
215 5th Street
Marysville, CA 95901

Stanislaus County DA
300 Starr Avenue
Turlock, CA 95380

Santa Clara County DA
2645 Zanker Road
San Jose, CA 95134

Mariposa County DA
P.O. Box 748
Mariposa, CA 95338

Marin County DA
3501 Civic Center Dr. #130
San Rafael, CA 94903

Santa Barbara County DA
1105 Santa Barbara St.
Santa Barbara, CA 93101

San Francisco City Attorney
1390 Market Street
San Francisco, CA 94102

Contra Costa County DA
727 Court Street
Martinez, CA 94553

Ventura County DA
800 South Victoria Avenue
Ventura, CA 95695

Kern County DA
2100 College Avenue
Bakersfield, CA 93305

San Joaquin DA
225 W. Elm Street #C
Lodi, CA 95240

Mendocino County DA
700 S. Franklin St.
Forst Bragg, CA 94537

Solano County DA
321 Tuolomne Street
Valejo, CA 94590

Butte County DA
25 County Center Drive
Oroville, CA 95695

Sutter County DA
446 Second Street
Yuba City, CA 95991

Santa Cruz County DA
701 Ocean Street
Santa Cruz, CA 95061

Nevada County DA
201 Church Street, Suite 8
Nevada City, CA 95959

San Luis Obispo County DA
1050 Monterey Street, Rm. 450
San Luis Obispo, CA 93408

San Bernardino County DA
316 N. Mountain View Av.
San Bernardino, CA 92415

Siskiyou County DA
P.O. Box 986
Yreka, CA 96097

Orange County District Attorney
700 Civic Center Dr. W., 2nd Fl.
Santa Ana, CA 92701

Alameda County DA
1225 Fallon Street
Oakland, CA 94612

Del Norte County DA
450 H Street
Crescent City, CA 95531

Mono County DA
P.O. Box 617
Bridgeport, CA 93517

San Francisco County DA
880 Bryant Street
San Francisco, CA 94103

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

Dated: February 10, 2003