

**ANTHONY G. GRAHAM**

**GRAHAM & MARTIN, LLP**

3 Park Plaza, Suite 2030

Irvine, CA 92614

Telephone: (949) 474 - 1022

Facsimile: (949) 474 - 1217

AnthonyGGraham@msn.com

**60 Day Notice of Intent to Sue Morton's Restaurant Group, Inc.,  
Porterhouse of Los Angeles, Inc. dba Arnie Morton's of Chicago, Morton's of Chicago/San  
Francisco, Inc., Morton's of Chicago/San Diego, Inc., Morton's of Chicago/Sacramento,  
Inc., Morton's of Chicago/Santa Ana, Inc. and Morton's of Chicago/Palm Desert, Inc.  
Under Health & Safety Code Section 25249.6**

This letter constitutes notification that Morton's Restaurant Group, Inc., Porterhouse of Los Angeles, Inc. dba Arnie Morton's of Chicago, Morton's of Chicago/San Francisco, Inc., Morton's of Chicago/San Diego, Inc., Morton's of Chicago/Sacramento, Inc., Morton's of Chicago/Santa Ana, Inc., Morton's of Chicago/Palm Desert, 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 "Mortons" 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 and shellfish in the form of meals containing swordfish, salmon and lobster (hereinafter referred to collectively as "Fish"). Fish contains mercury, mercury compounds, methyl mercury and methyl mercury compounds.

At the "Morton's" restaurants listed on Exhibit A the Violator serves on a daily basis swordfish in the form of a "broiled center cut swordfish steak", salmon in the form of "farm raised salmon" and lobster in the form of "whole baked Maine lobster." 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 January 25, 2003 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 January 25, 2003 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 January 25, 2003 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 January 25, 2003 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 violations, 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. At Le Meridien Hotel  
435 S. LaCienega Blvd.  
Los Angeles, CA 90048
2. 3400 West Olive Avenue  
Burbank, CA 91505
3. 735 S. Figueroa Street  
Los Angeles, CA 90017
4. 74-880 Country Club Drive  
Palm Desert, CA 92260
5. 521 L St.  
Sacramento, CA 95814
6. 285 J Street  
San Diego, CA 92101
7. 400 Post St.  
San Francisco, CA 94102
8. 1641 W. Sunflower Ave.  
Santa Ana, CA 92704

## 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:*

Allen J. Bernstein, CEO  
Morton's Restaurant Group, Inc.  
Porterhouse of Los Angeles, Inc. dba Arnie Morton's of Chicago  
Morton's of Chicago/San Francisco, Inc.  
Morton's of Chicago/San Diego, Inc.  
Morton's of Chicago/Sacramento, Inc.  
Morton's of Chicago/Santa Ana, Inc.  
Morton's of Chicago/Palm Desert, Inc.  
350 W Hubbard Suite 610  
Chicago, IL 60610

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

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

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

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

Riverside County DA  
4075 Main St., 1<sup>st</sup> Fl.  
Riverside, CA 92501

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

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

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