

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 Benihana, Inc., Benihana Sunrise Corporation ; Benihana Ontario Corp.; Benihana of Puente Hills Corp.; Benihana National Corp.; Benihana Monterey Corporation; Benihana Marina Corp.; Benihana International, Inc.; Benihana Encino Corp.; and Benihana Carlsbad Corp. Under Health & Safety Code Section 25249.6

This letter constitutes notification that Benihana, Inc., Benihana Sunrise Corporation ; Benihana Ontario Corp.; Benihana of Puente Hills Corp.; Benihana National Corp.; Benihana Monterey Corporation; Benihana Marina Corp.; Benihana International, Inc.; Benihana Encino Corp.; and Benihana Carlsbad Corp. (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 (hereinafter "Consumer Defense Group"), which may be contacted through the following entity: Law Offices of Graham & Martin, L.L.P., 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 operates a variety of restaurants (hereinafter referred to collectively as "Benihanas") which feature a variety of fresh seafood. These restaurants operate at the addresses 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 ahi (yellowfin) tuna, lobster, salmon, whitefish, mackerel, halibut and flounder (hereinafter referred to collectively as "Fish"). Fish contains mercury, mercury compounds, methyl mercury and methyl mercury compounds.

At the "Benihanas" restaurants listed on Exhibit A the Violator prepares and serves Fish in various types of meals. Attached hereto as Exhibit B are menus for the locations noted in Exhibit A showing that the restaurants owned and operated by the Violator serve the Fish noted above. 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 violations, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

Dated: February 25, 2003

By

EXHIBIT A

2100 E. Ball Road, Anaheim, California 92806

38 N. La Cienega Blvd., Beverly Hills, California 90211

1496 Old Bayshore Hwy., Burlingame, California 94010

5489 F Sunrise Blvd., Sacramento, California 95610

17877 Gale Avenue, City of Industry, California 91748

1989 Diamond Blvd., Concord, California 94520

2074 Vallco Fashion Park, Cupertino, California 95014

16226 Ventura Blvd., Encino, California 91436

4250 Birch Street, Newport Beach, California 92660

3760 E. Inland Empire Blvd., Ontario, California 91764

477 Camino Del Rio So., San Diego, California 92108

1737 Post Street, San Francisco, California 94115

21327 Hawthorne Blvd., Torrance, California 90503

136 Olivier St., Monterey, California 93940

1447 Fourth St., Santa Monica, California 90401

EXHIBIT B



Menus Teppanyaki



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and receive the latest updates on news in Japan as well as

Side Orders

Lunch Specials

Traditional

Specialties

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cuisine

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Specialties

Specialties are served with Japanese Onion Soup, Benihana Salad, Shrimp Appetizer, Hibachi Vegetables, Steamed Rice, Japanese Hot Green Tea and Ice Cream or Sherbert

Rocky's Choice Steak & Chicken

Hibachi Chateaubriand 9 oz. The juiciest center cut tenderloin with garlic butter you'll find anywhere

Benihana Teriyaki Beef Julienne Served with green onions and shrimp

Benihana Delight Chicken and shrimp

Splash n' Meadow Steak and shrimp

Land n' Sea Tenderloin and ocean scallops

Vegetable Delight (Tsutsumi-Yaki) Served with Teriyaki Tofu appetizer, Japanese noodles, assorted vegetables with seasonings, wrapped and cooked on the grill

Fish Tsutsumi-Yaki Salmon and hibachi vegetables wrapped and cooked on the grill

Benihana Special Steak and cold water lobster tail

Benihana Marina Shrimp, calamari and ocean scallops

Seafood Combination Cold water lobster tail, ocean scallops and shrimp

Chef's Special Cold water lobster tail, ocean scallops and Filet Mignon



Menus Sushi

BENIHANA

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► Nigiri Sushi

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Nigiri

Maguro (Tuna)

Hirame (Flounder)

Hirame (Whitefish)

Ika (Squid)

Saba (Mackerel)

Konku (Conch)

Sake (Salmon)

Hokki (Clam)

Hamachi (Yellowtail)

Kani (Crab)

Unagi (Saltwater Eel)

Uni (Sea Urchin)

Anago (Freshwater Eel)

Mirugai (Giant Clam)

Masago (Smelt Roe)

Amאי Ebi (Sweet Shrimp)

Ikura (Salmon Roe)

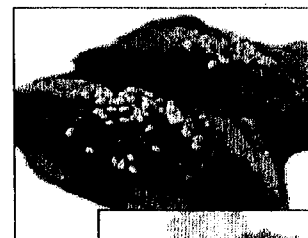
Ebi (Shrimp)

Tai (Halibut)

Tako (Octopus)

Sumoku Samon (Smoked Salmon) Tamago (Egg)

Inari (Soybean Cake)



To learn more about
the history of Sushi
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Menus Sushi

BENIHANA

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Most of all, it's fun! Join the Japan Corner members club!

Nigiri Sushi

Maki Sushi Roll

Sushi Appetizers

Sushi Rolls

Sushi Entrees

Learn more about
the history of Sushi
at the Japan Corner!

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Maki

Tekka-Maki Tuna Roll

Kappa-Maki Cucumber Roll

California Roll Avocado, crab meat, cucumber & smelt roe

Benihana Roll Sliced avocado, crab meat, cucumber & roasted sesame seeds

Orlando Roll Salmon, cream cheese & scallions

Rainbow Roll Tuna & salmon wrapped around a california roll

Futomaki Debmu, egg, crab meat, eel, shitake mushrooms, kampyo & cucumber

Shrimp Tempura Roll Shrimp tempura rolled in roasted sesame seeds and topped with a special sauce

Spicy Tuna Roll Fresh tuna served with a spicy sauce, cucumber and roasted sesame seeds, be careful!

Philadelphia Roll Smoked salmon, cream cheese, scallions & cucumber

Banzai Roll Fresh tuna with avocado, crab & cucumber



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Menu Sushi



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Maki Sushi Roll

Sushi Appetizers

Hand Rolls

Sushi Entrees

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Sushi Appetizers

Sushi Appetizer A sampling of our Benihana sushi, the freshest around.

Sashimi Appetizer A plate of fresh cut sashimi

Soft Shell Crab Appetizer A delicious taste that can only be soft shell crab



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Menus Sushi



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Handrolls

[Salmon Skin Hand Roll](#)

[Eel Hand Roll](#)

[Spicy Tuna Hand Roll](#)

[Natto Hand Roll](#)

[California Hand Roll](#)



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Menus Sushi



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Sushi Entrees

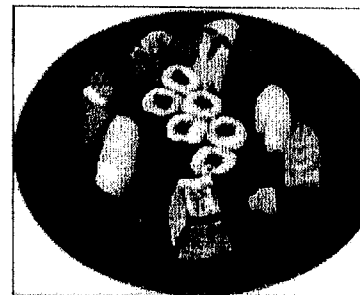
Chirashi Sushi Chef's selection of the day's fresh catch served on a bed of vinegared rice

Sushi Combination Pieces of nigiri sushi and one cucumber roll

Sushi Combination Deluxe Pieces of nigiri sushi and one tuna roll

Sashimi Dinner A full plate of the finest cut sashimi

Sushi & Sashimi Dinner A plentiful mixture of sushi and sashimi



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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. This certificate of merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposures to the listed chemicals that are the subject of the action.

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 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 & Safety Code section 25249.7(h)(2), i.e. the identity of the persons consulted with and relied upon by the certifier, and (2) the facts, studies, or other data reviewed

by those persons.

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 14, 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 25, 2003

Place of Mailing: Irvine, California

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

Joel A. Schwartz, President
Benihana, Inc. and related entities
8685 NW 53rd Ter.
Miami, FL 33166

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

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

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

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

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

San Diego County DA
330 Broadway
San Diego, CA 92101

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

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

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

Monterey County DA
240 Church Street
Salinas, CA 93901

Santa Monica DA
1725 Main St #228
Santa Monica CA 90401

San Mateo DA
1050 Mission Road
South San Francisco, CA 94080

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

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

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

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

Dated: February 25, 2003

