

# CONSUMER DEFENSE GROUP ACTION

---

## 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 Felson Companies Under Health & Safety Code Section 25249.6

Consumer Defense Group Action, a California corporation (hereinafter “CDG” or the “Noticing Party”) hereby gives Notice of Intent to Sue Under Health & Safety Code Section 25249.5 (the “Notice”) to Joseph L. Felson, the President and CEO of Felson Companies, Inc. (hereinafter, “Felson”), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through the following entity: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

This Notice is intended to inform Felson that it has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter “Proposition 65”) by failing and refusing to post clear and reasonable warnings at each of the facilities listed on Exhibit A hereto (which are owned/managed by Felson) (hereinafter “the Facilities”) that Felson (1) permits the smoking of tobacco products at the Facilities, which exposes customers, visitors and employees to tobacco smoke in the areas where smoking is permitted; and, (2) permits the operation of motor vehicles at the Facilities, which exposes customers, visitors and employees to diesel and gasoline exhaust fumes, and the chemicals contained in those fumes, in the areas where such vehicles are allowed to be operated.

### **Summary of Violation:**

Proposition 65 provides that when a party, such as Felson, has been and is knowingly and intentionally exposing its customers, visitors, employees and the general public 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). Tobacco smoke, as well as the constituent chemicals contained in tobacco smoke, are Designated Chemicals. Similarly, diesel and gasoline exhaust fumes contain Designated Chemicals.

Felson, in the ordinary course of business, controls much of the conduct and actions of its customers, visitors and employees at each of the Facilities. One of the actions Felson controls is whether or not to allow its customers, visitors and employees at each of the Facilities to smoke tobacco products. Similarly, Felson controls whether or not to allow its customers, visitors and employees at each of the Facilities to operate motor vehicles and the location of such operation at the Facilities.

Persons representing CDG have personally visited each of the Facilities during the time period between August, 2002 to the present date (hereinafter referred to as the “Investigation Period”). During those investigations CDG discovered that the Facilities are owned and/or managed by Felson, and that Felson has more than nine employees. Those investigations showed that Felson has chosen to allow its

vehicles which Felson permits at the Facilities. The areas at the Facilities where customers, visitors and employees are being exposed to tobacco smoke are the apartments, the lobbies, corridors and hallways of floors where apartments where smoking is allowed are located, areas adjacent to pools, entrances and common areas where smoking is permitted, public walkways and parking areas where smoking is permitted. The areas at the Facilities where customers, visitors and employees are being exposed to diesel and gasoline exhaust fumes the apartments and public walkways near to driveways and parking areas, and those driveways and parking areas.

**Occupational Exposures:**

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, Felson has been and is knowingly and intentionally exposing its employees to tobacco and tobacco smoke, diesel and gasoline exhaust fumes and other chemicals listed below and designated by the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code Section 25249.6). The source of exposure is (1) tobacco smoke caused by the smoking of tobacco products by persons who Felson permits to smoke tobacco products at the Facilities, and (2) diesel and gasoline exhaust fumes produced by the operation of motor vehicles which Felson permits at the Facilities. The source of exposure includes tobacco and tobacco smoke at the locations in Exhibit A. Employees include and are not limited to security personnel, maintenance workers, service personnel and administrative personnel. The areas at the Facilities where employees are being exposed to tobacco smoke are the apartments, the lobbies, corridors and hallways of floors where apartments where smoking is allowed are located, areas adjacent to pools, entrances and common areas where smoking is permitted, public walkways and parking areas where smoking is permitted. The areas at the Facilities where employees are being exposed to diesel and gasoline exhaust fumes the apartments and public walkways near to driveways and parking areas, and those driveways and parking areas.

The route of exposure for Occupational Exposures and Environmental Exposures to the chemicals listed below has been inhalation and dermal contact with (1) tobacco smoke and (2) diesel and gasoline exhaust fumes at the Facilities. In other words, via breathing and contact with the skin of (1) tobacco smoke and (2) diesel and gasoline exhaust fumes.

For each such type and means of exposure, Felson has exposed and is exposing the above referenced persons to the chemicals listed on the document attached hereto entitled "LIST OF CARCINOGENS/TOXINS."

Proposition 65 requires that notice and intent to sue be given to Felson sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to Felson and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to CDG from information now available to them. CDG reserves the right to amend this Notice to inform Felson of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to Felson, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary".

Dated: July 18, 2003

By:

**EXHIBIT A****FELSON COMPANIES, INC.**

<p>Pebble Creek I &amp; II Apartments 40777 High Street Fremont, CA 94538 64 Apts.</p>	<p>Park Orchard 605 Orchard Avenue Hayward, CA 94544 150 Apts.</p>
<p>Greenridge Condominiums 947 Fletcher Lane Hayward, CA 94544 37 Apts.</p>	<p>Mission Heights Apartments 28500 Mission Boulevard Hayward, CA 94544 146 Apts.</p>
<p>Gatehouse Square 1318 B Street Hayward, CA 94541 81 Apts.</p>	<p>Garwood Glen Townhomes 1290 B Street Hayward, CA 94541 30 Apts.</p>
<p>Crestview Apartments 837 Hancock Street Hayward, CA 94544 182 Apts.</p>	<p>Bentley Place 22525 Third Street Hayward, CA 94541 68 Apts.</p>
<p>Creekside Apartments 22160 Center Street Castro Valley, CA 94546 52 Apts.</p>	<p>Cedars Apartments 22302 Center Street Castro Valley, CA 94546 83 Apts.</p>
<p>Whitman Green Apartments 26379 Whitman Street Hayward, CA 94544 188 Apts.</p>	<p>Woodlark Apartments 44 Harder Road Hayward, CA 94544 46 Apts.</p>
<p>De Anza Terrace 16457 East 14<sup>th</sup> Street San Leandro, CA 94578 24 Apts.</p>	<p>Fontana Apartments 3843 Carol Avenue Fremont, CA 94538 46 Apts.</p>
<p>Skylark Apartments 41277 Roberts Avenue Fremont, CA 94538 42 Apts.</p>	<p>Roberts Lane 41240 Roberts Lane Fremont, CA 94538 90 Apts.</p>

Roberts Lane 41240 Roberts Avenue Fremont, CA 94538 90 Apts.	
---	--

# LIST OF CARCINOGENS AND REPRODUCTIVE TOXINS

<b>CARCINOGENS IN TOBACCO SMOKE:</b>	
Acetaldehyde	Acetamide
Acrylonitrile	4-Aminobiphenyl
(4-Aminodiphenyl)	Aniline
Ortho-Anisidine	Arsenic (inorganic arsenic compounds)
Benz[a]anthracene	Benzene
Benzo[b]fluoranthene	Benzo[j]fluoranthene
Benzo[k]fluoranthene	Cadmium
Captan	Chromium (hexavalent compounds)
Chrysene	Dichlorodiphenyltrichloroethane (DDT)
Bibenz[a,h]anthracene	7H-Dibenzo[c,g]carbazole
Dibenzo[a,e]pyrene	Dibenzo[a,h]pyrene
Dibenzo[a,i]pyrene	Dibenzo[a,l]pyrene
1,1-Dimethylhydrazine (UDMH)	Formaldehyde (gas)
Hydrazine	Lead and lead compounds
1-Naphthylamine	2-Naphthylamine
Nickel and certain nickel compounds	2-Nitropropane
N-Nitrosodi-n-butylamine	N-Nitrosodiethanolamine
N-Nitrosodiethylamine	N-Nitrosomethylethylamine
N-Nitrosomorpholine	N-Nitrosornicotine
N-Nitrosopiperidine	N-Nitrosopyrrolidine
Ortho-Toluidine	Tobacco Smoke
Urethane (Ethyl carbamate)	
<b>CARCINOGENS IN DIESEL AND GASOLINE EXHAUST FUMES:</b>	
Benzene	Unleaded Gasoline (wholly vaporized)
<b>REPRODUCTIVE TOXINS IN TOBACCO SMOKE:</b>	
Arsenic (inorganic Oxides)	Cadmium
Carbon disulfide	Carbon monoxide
Lead	Nicotine
Toluene	Tobacco Smoke
Urethane	
<b>REPRODUCTIVE TOXINS IN DIESEL AND GASOLINE FUMES:</b>	
Benzene	Unleaded Gasoline (wholly vaporized)

## CERTIFICATE OF MERIT

I, Michael J. Martin, 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 The Consumer Defense Group Action, the “Noticing Party” as to the “60 Day Notice of Intent to Sue” (hereinafter, “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 appropriate and qualified scientific experts and, having reviewed relevant scientific data and results of relevant test reports, as well as having reviewed the facts as set forth below and the documentary evidence of those facts regarding the exposures to the chemicals as set forth in the Notice, I have a good faith basis for believing that the exposures set forth in the Notice are likely to be above the minimum significant risk level for the chemicals at issue. I have provided the information, documents, data, reports and/or opinions I have relied upon to the Attorney General’s office as required by the regulations promulgated under Proposition 65.

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 physical investigation

of the location referenced in the Notice and by investigation of relevant information, documents, data, and reports Consumer Defense Group Action discovered that:

- (1) the Violator is responsible for, and thus “operates”, the specific subject property or properties for purposes of Health and Safety Code section 25249.5 and 25249.6;
- (2) the Violator has more than nine employees;
- (3) the Violator permits and has permitted the “release” of the chemicals set forth in the Notice and such “releases” threaten to pass in sources of drinking water;
- (4) exposures to the chemicals set forth in the Notice have occurred and continue to occur both to offsite and onsite persons;
- (5) the Violator has not put in place a clear and reasonable warning as required under Health & Safety Code section 25249.6, or any other sign purporting to comply with the requirements of that section.

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 July 16, 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;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to violators*); and
- 3.) Certificate of Merit;
- 4.) Supporting documents (*only sent to Office of Attorney General*)

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: July 18, 2003  
Place of Mailing: Irvine, California

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

Felson Companies, Inc. 1290 B Street, Suite 212 Hayward, CA 94541 Attention: Joseph L. Felson, President and CEO	California Attorney General (Proposition 65 Enforcement Division) P.O. Box 944255 Sacramento, CA 94244-2550
---	--

Alameda County DA  
1225 Fallon Street  
Oakland, Ca. 94612

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

Dated: July 18, 2003

\_\_\_\_\_