

# CONSUMER DEFENSE GROUP ACTION

---

## GRAHAM & MARTIN, LLP

3 Park Plaza, Suite 2030

Irvine, CA 92614

Telephone: (949) 474 - 1022

Facsimile: (949) 474 - 1217

## 60 Day Notice of Intent to Sue Braddock & Logan Group, LP, Braddock & Logan Group II LP, Braddock & Logan Venture Group LP and Braddock & Logan Services, Inc. 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 Bryce Blair, the President/CEO of Braddock & Logan Group, LP, Braddock & Logan Group II LP, Braddock & Logan Venture Group LP and Braddock & Logan Services, Inc. (hereinafter referred to collectively as "Braddock"), as well as the governmental entities on the attached proof of service, and David Sugden, counsel for record for Braddock. 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 Braddock 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 Braddock ) (hereinafter "the Facilities") that Braddock permits the operation of motor vehicles at the Facilities, which exposes customers, visitors and employees to diesel and gasoline exhaust fumes, which contain benzene, in the areas where such vehicles are allowed to be operated.

### **Summary of Violation:**

Proposition 65 provides that when a party, such as Braddock, 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. Diesel and gasoline exhaust fumes contain benzene, a Designated Chemical.

Braddock, 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 BRADDOCK controls is 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.

Over the course of the last year (hereinafter referred to as the "Investigation Period") during litigation against Braddock CDG has gathered a great deal of information concerning the Facilities operated by Braddock. During those investigations CDG discovered that the Facilities are owned and/or managed by BRADDOCK, and that BRADDOCK has more than nine employees. Those investigations showed that BRADDOCK has chosen to allow its customers, visitors and employees at each of the Facilities to operate motor vehicles in certain areas, the driveways and parking areas.

In the Facilities and areas noted BRADDOCK has chosen to allow its customers, visitors and employees to be exposed to diesel and gasoline exhaust fumes containing benzene via the breathing of such fumes (inhalation) and by contact with the skin and clothing (dermal contact). Evidence that the operation of motor vehicles (and thus exposures to diesel and gasoline exhaust fumes) was taking place at the Facilities, has been seen by the investigators for CDG at the Facilities and admitted during litigation in formal discovery by Braddock during the Investigation Period. The investigation by CDG of the Facilities showed that BRADDOCK has specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings at any of the entrances to the Facilities, in the parking areas, or in the areas leading into the Facilities from the parking areas, so that its customers, visitors and employees, who may not wish to be exposed, can be warned that, upon entering any of those areas, they may be exposed to diesel and/or gasoline exhaust fumes, containing benzene, a chemical known to the State of California to cause cancer and/or reproductive toxicity.

It is clear therefore that for the entire period of time that BRADDOCK has owned and/or controlled the Facilities prior to the Investigation Period, BRADDOCK has failed to post clear and reasonable warning signs at the Facilities in compliance with Proposition 65. Given that the maximum period of potential liability pursuant to Proposition 65 and Business & Professions Code §17200 (which are the operative statutes pursuant to which a complaint will be filed against BRADDOCK) is four years, this Notice is intended to inform BRADDOCK that it has been in violation of Proposition 65 from the time period from four years prior to the last date of the Investigation Period noted above, for every day upon which BRADDOCK owned and/or controlled any Facility listed on Exhibit A.

The written reports prepared by the investigators for CDG, prepared contemporaneously with the investigations conducted during the Initial Investigation Period, together with supporting photographic and other evidence from the Facilities, has been provided to the Office of the Attorney General responsible for Proposition 65 enforcement.

### **Environmental 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, BRADDOCK has been and is knowingly and intentionally exposing its customers and the public to the 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 persons (Health & Safety Code Section 24249.6). The source of exposure is diesel and gasoline exhaust fumes containing benzene and produced by the operation of motor vehicles which BRADDOCK permits at the Facilities. 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, BRADDOCK has been and is knowingly and intentionally exposing its employees to 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 diesel and gasoline exhaust fumes produced by the operation of motor vehicles which BRADDOCK permits at the Facilities. 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 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 Designated Chemical has been inhalation and dermal contact with diesel and gasoline exhaust fumes at the Facilities. In other words, via breathing and contact with the skin of diesel and gasoline exhaust fumes.

Proposition 65 requires that notice and intent to sue be given to BRADDOCK sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to BRADDOCK 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 BRADDOCK of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to BRADDOCK, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary".

Dated: October 3, 2003

By:

**Braddock & Logan**

Birchtree Apartments  
1601 Pine Street  
Concord, CA 94520

Lime Ridge Apartments  
3278 Tioga Road  
Concord, CA 94518

Madera Vista  
300 Robin Drive  
Corte Madera, CA 94925

Park Sequoia Apartments  
3190 Red Cedar Terrace  
Fremont, CA 94536

Autumn Springs Apartments  
1700 Paseo Laguna Seco  
Livermore, CA 94550

Vista Oaks  
3883 Vista Oaks Dr.  
Martinez, CA 94553

Village Lake Apartments  
777 West Middlefield Road  
Mountain View, CA 94043

Kentwood  
550 River Glen Drive  
Napa, CA 94558

Brookside Apartments  
501 Ryan Drive  
Pleasant Hill, CA 94523

Civic Square Apartments  
4800 Bernal Ave.  
Pleasanton, CA 94566

Park Place  
255 Park Place  
San Ramon, CA 94583

Medallion Apartments  
2500 Medallion Drive  
Union City, CA 94587

City View  
1307 Mount Piscah  
Walnut Creek, CA 94596

The Pines Apartments  
114 Sharene Lane  
Walnut Creek, CA 94596

Walnut Park Apartments  
140 Sharene Lane  
Walnut Creek, CA 94596

## **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 The Consumer Defense Group, 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 October 2, 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: October 3, 2003

Place of Mailing: Irvine, California

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

Joseph Raphael, President Braddock & Logan Group, LP Braddock & Logan Group II LP Braddock & Logan Venture Group LP Braddock & Logan Services, Inc. 4155 Blackhawk Plaza Circle, Ste. 201 Danville, CA 94506	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
--	---

Counsel for Braddock Communities, Inc.  
Rudy Perrino, Esq.  
Gordon & Rees  
4695 MacArthur Court, Suite 1200  
Newport Beach, CA 92660

San Mateo DA 1050 Mission Road S. San Francisco, CA 94080	Marin County DA 3501 Civic Center Dr. #130 San Rafael, CA 94903
---	---

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

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

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

Contra Costa County DA  
727 Court Street  
Martinez, CA 94553

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

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: October 3, 2003

\_\_\_\_\_