

CONSUMER DEFENSE GROUP ACTION

GRAHAM & MARTIN, LLP

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60 Day Notice of Intent to Sue AvalonBay Communities, 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 AvalonBay Communities, Inc. (hereinafter referred to as "AvalonBay"), as well as the governmental entities on the attached proof of service, and Rudy Perrino, counsel for record for AvalonBay. 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 AvalonBay 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 AvalonBay) (hereinafter "the Facilities") that AvalonBay 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 AvalonBay, 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.

AvalonBay, 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 AVALONBAY 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 AvalonBay CDG has gathered a great deal of information concerning the Facilities operated by AvalonBay. During those investigations CDG discovered that the Facilities are owned and/or managed by AVALONBAY, and that AVALONBAY has more than nine employees. Those investigations showed that AVALONBAY 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 AVALONBAY 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 AvalonBay during the Investigation Period. The investigation by CDG of the Facilities showed that AVALONBAY 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 AVALONBAY has owned and/or controlled the Facilities prior to the Investigation Period, AVALONBAY 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 AVALONBAY) is four years, this Notice is intended to inform AVALONBAY 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 AVALONBAY 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, AVALONBAY 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 AVALONBAY 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, AVALONBAY 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 AVALONBAY 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 AVALONBAY sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to AVALONBAY 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 AVALONBAY of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to AVALONBAY, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary".

Dated: October 3, 2003

By:

EXHIBIT A

1. 489 S. Chatham Circle, Anaheim
2. 401 Pass Avenue, Burbank
3. 1765 Santa Ana Ave., Costa Mesa
4. 555 Paularino Ave., Costa Mesa
5. 2401 South Hacienda Blvd., Hacienda Heights
6. 6700 Warner Avenue, Huntington Beach
7. 16761 Viewpoint Land, Huntington Beach
8. 30122 Niguel Road, Laguna Niguel
9. 3636 S. Sepulveda Blvd., Los Angeles
10. 24950 Via Florecer, Mission Viejo
11. 111 Via Serena, Rancho Santa Margarita
12. 3883 Ingraham Street, San Diego
13. 1399 9th Avenue, San Diego
14. 13293 Rancho Penasquitos Blvd., San Diego
15. 200 North Grand Ave., West Covina
16. 20544 Ventura Blvd., Woodland Hills
17. 5727 Canoga Ave., Woodland Hills
18. 508 Railway Ave., Campbell
19. 225 Union Ave., Campbell
20. 5608 Stevens Creek Blvd., Cupertino
21. 500 King Drive, Daly City
22. 7904 Fall Creek Road, Dublin
23. 700 Marlin Avenue, Foster City
24. 39939 Stevenson Commons, Fremont
25. 231 Woodcreek Common, Fremont
26. 25800 Industrial Blvd., Hayward
27. 151 Calderon Ave., Mountain View
28. 1600 Villa Mariposa, Mountain View
29. 265 Gateway Drive, Pacifica
30. 3650 Andrews Drive, Pleasanton
31. 655 Enterprise Drive, Rohnert Park
32. 965 Sutter Street, San Francisco
33. 388 Beale Street, San Francisco
34. 8 Locksley Avenue, San Francisco
35. 5285 Diamond Heights Blvd., San Francisco
36. 1300 The Alameda, San Jose
37. 401 Briar Ridge Drive, San Jose
38. 1895 North Capitol Ave., San Jose
39. 448 Toyon Avenue, San Jose
40. 1070 Foxchase Drive, San Jose
41. 3601 Copperfield Drive, San Jose
42. 2175 Aborn Road, San Jose
43. 373 Iver Oaks Circle, San Jose
44. 300 Channing Way, San Rafael
45. 355 North Wolfe Road, Sunnyvale
46. 880 East Fremont Ave., Sunnyvale
47. 1257 Lakeside Drive, Sunnyvale
48. 2175 Decoto Road, Union City

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 3, 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:

Bryce Blair, President/CEO AvalonBay Communities, Inc. 2900 Eisenhower Avenue, Suite 300 Alexandria, VA 22314	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
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Sacramento County DA
P.O. Box 749
Sacramento, CA 95812

San Diego County DA
330 Broadway
San Diego, CA 92101

Los Angeles County DA
210 W. Temple Street,
Los Angeles, CA 90012

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

Napa County DA
931 Parkway Mall
Napa, CA 94559

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

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

Alameda County DA
1225 Fallon Street
Oakland, CA 94612

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

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

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

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

Contra Costa County DA
727 Court Street
Martinez, CA 94553

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

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

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

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
