

# GRAHAM & MARTIN, LLP

ATTORNEYS AT LAW

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## **NOTICE BY THE MCKENZIE GROUP AND CONSUMER DEFENSE GROUP OF INTENT TO SUE PURSUANT TO HEALTH & SAFETY CODE § 25249.6**

Owner/Violator: Bell Hotel, Ltd.  
Operator/Violator: MGSD, Inc.  
Property Name: Bell Hotel  
Address: 1492 K St. San Diego CA 92101

This legal notice constitutes notification that Bell Hotel, Ltd. and MGSD, Inc. (hereinafter referred to collectively as the "Violator") have violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (Cal. Health and Safety Code § 25249.5 et seq.) at the property identified above. This notice is given by The McKenzie Group and Consumer Defense Group which must be contacted through their legal representative Graham & Martin LLP, attn. Anthony G. Graham, at the above address and telephone number.

Proposition 65 requires that a notice of violation and intent to sue be given to the Violator sixty (60) days prior to commencing a private enforcement proceeding pursuant to Health & Safety Code § 25249.7(d). With this letter, The McKenzie Group and Consumer Defense Group, associations acting in the public interest, give notice of the alleged violations to the Violator and to the Attorney General and District Attorney and City Attorney of cities with a population of over 750,000, in each county and city in which the violations are alleged to have occurred. This notice covers all violations of Proposition 65 that are currently known to The McKenzie Group and Consumer Defense Group from information now available to them. Attached to this notice submitted to the Violator is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

### **I. SUMMARY OF VIOLATIONS:**

Proposition 65 requires that when a party, such as the Violator, has been or is knowingly and intentionally exposing its customers, the public and/or its employees to a detectable level of any chemical designated by the State of California to cause cancer or reproductive toxicity (the "Designated Chemicals") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that exposure to the potentially exposed persons (Health & Safety Code § 25249.6). The Violator has chosen to allow its customers, visitors, guests and employees at the hotel noted above (hereinafter, the "Property") to be exposed to Designated Chemicals associated with its operations. The Violator, in the ordinary course of business, knows, controls and intends much of the conduct and actions of its customers, visitors, guests

and employees at the Property. The activities of the Violator including its employees and contractors, and the facilities and amenities provided at the Property as set forth in detail below expose customers, visitors, guests, business invitees and employees to Designated Chemicals.

Therefore, the Violator has knowingly and intentionally exposed its customers, visitors, guests and employees at the Property to Designated Chemicals. Exposures to Designated Chemicals occur at the Violator's Property in a variety of ways as described in detail below, including inhalation (breathing of designated chemicals in gaseous, vapor or particulate form), dermal contact and absorption from skin and/or clothing and ingestion directly with respect to consumables but also indirectly due to touching of contaminated surfaces and subsequent hand-to-mouth contact. Despite knowledge of such exposures, the Violator has failed to provide clear and reasonable warnings as required by Proposition 65, so that its customers, visitors, guests and employees, who may not wish to be exposed, are warned prior to exposure that they may be exposed to Designated Chemicals.

#### A. Environmental Exposures

While in the course of doing business, at the locations in the attached Exhibit A, from October 1, 1999 through the current date, the Violator has been and is knowingly and intentionally exposing customers, visitors, guests and employees to Designated Chemicals listed below and known to the State of California to cause cancer, birth defects or reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 25249.6). The locations of the exposures are at and around the Property and due to the facility activities (e.g. maintenance) and the amenities provided at the Property.

#### B. Occupational Exposures

While in the course of doing business from October 1, 1999 through the current date, the Violator has been and is knowingly and intentionally exposing employees to Designated Chemicals listed below and designated by the State of California to cause cancer, birth defects or reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code Section 25249.6). Employees include the property's bartenders, cashiers, hosts, waiters, waitresses, chefs, cooks, kitchen personnel, engineering staff, janitors, maids, housekeepers, concierge, bell staff, valets, security personnel, maintenance workers, service personnel, administrative personnel, and professional personnel and business invitees and contractors who are employees of others, in and around the Property and its facilities and amenities.

#### C. Product Exposures

While in the course of doing business from October 1, 1999 through the current date, the Violator has been and is knowingly and intentionally exposing customers, visitors, guests and employees to products containing Designated Chemicals listed below and designated by the State of California to cause cancer, birth defects or reproductive toxicity without first giving clear and

reasonable warning of that fact to the exposed person (Health & Safety Code Section 25249.6). The product exposures include products which are commonly in use at hotels and lodging establishments. The customers, visitors, guests and employees who are exposed to such products, and the locations of such exposures, are more fully described in this notice below.

## II. DETAILS OF VIOLATIONS:

After appropriate due diligence and investigation of Violators, including review and verification of detailed information regarding exposure to customers, visitors, guests and employees, and consultations with experts on such matters, such unlawful exposures occur in the following ways at the Property.

### A. Specific Violations

### B. General Violations

#### 1. Second-hand Tobacco Smoke and Smokeless Tobacco Products

Short description: Tobacco smoke and its by-products contain many chemicals that may be harmful if inhaled. Smoking is allowed at areas designated by the property manager including designated rooms and some outdoor areas at this Property. Hotel guests and employees are being exposed to tobacco smoke.

Route(s) of exposure: Breathing second-hand smoke and contact with skin and clothing.

General location or occupation of person(s) exposed: Guests, visitors and employees (including service, administrative, and professional staff), which enter designated smoking areas.

Location of the source of exposure: Various designated smoking areas, including guest rooms, open areas, pool areas and parking lots.

Names of Proposition 65-listed chemicals involved and reason for listing: Tobacco smoke (cancer) and associated chemicals including but not limited to nicotine (developmental toxicity) and carbon monoxide (developmental toxicity).

#### 2. Cleaning Supplies/Janitorial

Short description: In order to clean, sanitize, and maintain this hotel, products such as floor strippers, polishes, drain cleaners, waxes, silica, glass wool fibers, cleaners and sanitizers, are used to enhance the health, safety and welfare of guests, visitors and employees (including maintenance service, administrative, and professional staff). The hotel's cleaning and maintenance operations exposes guests and employees to Designated Chemicals.

Route(s) of exposure: Dermal, inhalation and ingestion through hand-to-mouth contact.

General location or occupation of person(s) exposed: Guests, visitors and employees (including maintenance, maids, janitorial, cooks and kitchen personnel, as well as other personnel using cleaning supplies service, administrative, and professional staff).

Location of the source of exposure: All fixtures and surfaces which require the use of cleaning/janitorial supplies to be maintained and hotel vehicles.

Names of Proposition 65-listed chemicals involved and reason for listing: Floor polishing compounds in use at the Property contain and surfaces polished generate crystalline silica (cancer). Metal polishing compounds in use at the Property contain crystalline silica (cancer) and ceramic fibers (cancer) and generates aerosol and surface contamination from metals polished; for example, brass which contains lead (cancer, developmental and male/female reproductive toxicity). Wood polish and refinishing materials in use at the Property contain toluene (developmental toxicity) and petroleum distillates and xylenes that contain benzene (cancer). Spot removers used on carpets and furniture in use at the Property, and chewing gum removers contain solvents, including methylene chloride (cancer), tetrachloroethylene (cancer), toluene (developmental toxicity) and benzene (cancer). General purpose cleaners contain ethylene glycol monoethyl and monoethyl ether and ether acetate (developmental and male reproductive toxicity). Disinfectants and bleaches in use at the Property containing chlorine compounds generate chloroform (cancer) when in contact with organic compounds.

### 3. Maintenance/Power Tools

Short description: In order to maintain finishes and shape surfaces, power tools are periodically used on the Property which creates dust. Guests and employees exposed to dust from power tools are being exposed to Designated Chemicals.

Route(s) of exposure: Dermal, inhalation and ingestion through hand-to-mouth contact.

General location or occupation of person(s) exposed: Guests, visitors and employees (including maintenance, handymen, janitorial, craftsmen, engineering staff, and other service, administrative, and professional staff).

Location of the source of exposure: Any locations, including public and employee only areas, where power tools may be used.

Names of Proposition 65-listed chemicals involved and reason for listing: Dust generated by maintenance and power tools contain the Designated Chemical(s) contained on or in the construction material, surface coating and paints being shaped or sanded or from any abrasive material used. The most common Designated Chemicals are: crystalline silica (cancer), lead (cancer, developmental and male/female reproductive toxicity), cadmium (cancer), asbestos (cancer and developmental and male reproductive toxicity), arsenic and its inorganic oxides

(cancer and developmental toxicity), hexavalent chromium compounds (cancer), and cobalt and cobalt oxide (cancer) and nickel and certain nickel compounds (cancer).

#### 4. Furniture/Furnishings/Window Treatments

Short description: This hotel contains furniture, furnishings and window treatments in common areas, guest rooms, and administrative offices. Construction materials, including foams, metals, treated wood, carpets and carpet padding, fabrics, coatings, rubber parts and plastics and vinyl are used to construct such furniture and contain Designated Chemicals. Guests and employees who come into contact with the hotel's furniture, furnishings and window treatments are being exposed to Designated Chemicals.

Route(s) of exposure: Inhalation, dermal and ingestion through hand-to-mouth contact.

General location or occupation of person(s) exposed: Guests, visitors and employees (including service, administrative, and professional staff).

Location of the source of exposure: All locations where furniture, furnishings and window treatments are located including guest rooms, common areas and employee only areas.

Names of Proposition 65-listed chemicals involved and reason for listing: Organic compounds emitted or present on the surface of furnishings include: Foams used in couches, seat cushions, carpet pads contain and emit methylene chloride (cancer), urethane (cancer and developmental toxicity), toluene diisocyanate (cancer), and soots, tars and mineral oils (cancer). Metal fixtures and furniture hardware including brass and zinc, chrome, or cadmium-plated metal contain lead (cancer, developmental and male/female reproductive toxicity), cadmium (cancer), and hexavalent chromium compounds (cancer) and nickel and certain nickel compounds (cancer). Plastic and rubber components of furniture and fixtures contain: 1,3 butadiene (cancer), Di(2-ethylhexyl) phthalate (cancer), vinyl chloride (cancer), lead and lead compounds (cancer, developmental and male/female reproductive toxicity), cadmium (cancer), and hexavalent chromium compounds (cancer). Window treatments, including window blinds and painted trim that contain lead and lead compounds (cancer, developmental and male/female reproductive toxicity).

#### 5. Public and Guest Bathrooms

Short description: In addition to cleaners and sanitizes, bathrooms located on the Property contain odor cakes, air fresheners, soaps, shampoos, conditioners, mouthwash and paper products which contain Designated Chemicals. Guest and employees are being exposed to these Designated Chemicals.

Route(s) of exposure: Inhalation, ingestion and dermal.

General location or occupation of person(s) exposed: Guests, visitors and employees.

Location of the source of exposure: Guest bathrooms and public restrooms.

Names of Proposition 65-listed chemicals involved and reason for listing: Cleaners and sanitizers used in public and guest bathrooms at the Property contain the same Designated Chemicals identified in Paragraph 2 with respect to cleaning and janitorial supplies. Public restroom odor cakes and air fresheners contain p-dichlorobenzene (cancer) and formaldehyde (cancer). Mouthwash contains sodium saccharine (cancer) and ethyl alcohol (developmental toxicity). Soaps, shampoos and conditioners contain soots, tars, and mineral oils (cancer). Paper products contain detectable amounts of lead and lead compounds (cancer, developmental and male/female reproductive toxicity).

#### 6. Medical/First Aid Supplies

Short description: This hotel uses first aid kits and medical supplies, such as aspirin, anti-bacterial ointments and creams, spray treatments, and other medicines as may be required by worker safety laws and regulations. These medical and first aid supplies contain Designated Chemicals. Guests and employees in need of first aid are being exposed to Designated Chemicals.

Route(s) of exposure: Dermal, ingestion and inhalation.

General location or occupation of person(s) exposed: Guests, visitors and employees who are in need of first-aid (including service, administrative, and professional staff).

Location of the source of exposure: At treatment location

Names of Proposition 65-listed chemicals involved and reason for listing: Analgesic aspirin contains aspirin (developmental and female reproductive toxicity). Antiseptic solutions contain ethyl alcohol (developmental toxicity). Ointments contain soots, tars, and mineral oils (cancer) and plastic wound dressings like bandages contain di (2-ethylhexyl) phthalate (cancer) and ethylene oxide (cancer and female reproductive toxicity). Neosporin ointments contain neomycin sulfate (developmental toxicity).

#### 7. Internal Combustion ("IC") Engines, Boilers and other Gas Burning Devices, and Fireplaces

Short description: IC engines, boilers, gas burning engines, and fireplaces producing emissions are used in and around this hotel for a variety of purposes including emergency generators, fire fighting equipment, gardening equipment, vehicles used for transportation, heating and water heaters. The emissions from IC engines, boilers and other gas burning devices contain Designated Chemicals. Hotel guests and employees are being exposed to these Designated Chemicals.

Route(s) of exposure: Inhalation.

General location or occupation of person(s) exposed: Guests, visitors and employees (including service, gardening, landscaping, chauffeurs, administrative, and professional staff) who are exposed to emissions.

Location of the source of exposure: Boiler rooms, guest rooms and common areas where fireplaces are located and recreation and maintenance areas where IC engines (stationary and mobile or portable) are used.

Names of Proposition 65-listed chemicals involved and reason for listing: Internal combustion engines used in emergency generators; vehicles; powered mowers, weed-eaters and other landscaping equipment emit diesel engine exhaust (cancer) or gasoline engine exhaust (cancer) and other chemicals (cancer, developmental and male/female reproductive toxicity). Natural gas or fuel gas burning boilers, water heaters, space heaters, kitchen appliances and gas-operated fireplaces emit carbon monoxide (developmental toxicity), formaldehyde (cancer), soots and tars (cancer) and other chemicals (cancer, developmental and male/female reproductive toxicity). Fireplaces which use wood fuel emit carbon monoxide (developmental toxicity), soots and tar (cancer), benzene (cancer), creosotes (cancer) and other chemicals (cancer and developmental, and male/female reproductive toxicity).

8. Electronic Equipment, Electric Equipment and Associated Cables Wires and Batteries

Short description: Electronic equipment, electric equipment and cables, and batteries are located throughout this hotel, the touching of which exposes persons to Designated Chemicals. Guests and employees who touch this equipment are being exposed to Designated Chemicals.

Route(s) of exposure: Dermal and ingestion through hand-to-mouth contact.

General location or occupation of person(s) exposed: Guests, visitors and employees (including service, engineers, administrative, and professional staff).

Location of the source of exposure: Universal

Names of Proposition 65-listed chemicals involved and reason for listing: Electronic equipment, including computer housings, keyboards, mouse devices, connecting cables, and insulated electrical wires are made from pigmented, plasticized polyvinyl chloride which contains vinyl chloride (cancer), lead (cancer, developmental and male/female reproductive toxicity), di(2-ethylhexyl) phthalate (cancer), and other chemicals (cancer, developmental and male/female reproductive toxicity). Batteries used to power security lights and other back-up power systems and light bulbs, fluorescent lamps and other lighting devices, have lead terminals or soldered terminals or wires which contains lead (cancer, developmental and male/female reproductive toxicity).

## 9. Office Supplies and Office Equipment

Short description: Office supplies and equipment used on this Property, including carbonless paper, marking pens, correction fluids, copier machine chemicals contain Designated Chemicals. Guests and Employees who use the hotel's office supplies and equipment are being exposed to Designated Chemicals.

Route(s) of exposure: Dermal, inhalation and ingestion.

General location or occupation of person(s) exposed: Guests, visitors and employees (including service, administrative, and professional staff).

Location of the source of exposure: In and around the Property, its facilities and amenities.

Names of Proposition 65-listed chemicals involved and reason for listing: Carbonless copy paper is used at the Property and contains formaldehyde (cancer), benzene (cancer), toluene diisocyanate (cancer), and toluene (developmental toxicity). Marking pens used at the Property contain toluene (developmental toxicity), creosote (cancer), and ethylene glycol monoethyl ether (developmental and male reproductive toxicity). Correction fluids used at the Property are known to have contained trichloroethylene (cancer) and contain toluene (developmental toxicity) and benzene (cancer). Copier machine toner used at the Property contains carbon black (carbon black extracts cause cancer).

## 10. Hand Tools, Hardware and Brass Keys

Short description: Hand tools, hardware and brass keys located at this hotel contain Designated Chemicals. Guests and employees who come into contact with tools, hardware and brass keys are being exposed to Designated Chemicals.

Route(s) of exposure: Dermal and ingestion through hand-to-mouth contact.

General location or occupation of person(s) exposed: Guests, visitors and employees (including service, administrative, and professional staff).

Location of the source of exposure: In and around the Property, its facilities and amenities.

Names of Proposition 65-listed chemicals involved and reason for listing: Hand tools contain metals or are plated with metals which contain lead (cancer, developmental and male/female reproductive toxicity), hexavalent chromium (cancer), nickel and certain nickel compounds (cancer), cadmium and cadmium compounds (cancer, developmental and male reproductive toxicity). Hand tools that have plastic handles are made with pigmented, plasticized PVC which contains: di(2-ethylhexyl) phthalate (cancer), vinyl chloride (cancer),



lead and lead compounds (cancer, developmental and male/female reproductive toxicity), cadmium (cancer) and hexavalent chromium compounds (cancer).

11. Fertilizers, Soil Amendments, Pesticides and Herbicides

Short description: Fertilizers and soil amendments are used frequently in both outdoor and indoor plantings and other vegetative areas located on the Property to promote growth and appearance. Pesticides and herbicides which contain Designated Chemicals are used to eradicate pests in occupied areas and maintain plants and landscaping areas from infestation. Guests and employees who come into contact with fertilizers, pesticides and herbicides are being exposed to Designated Chemicals.

Route(s) of exposure: Inhalation, dermal and ingestion through hand-to-mouth contact.

General location or occupation of person(s) exposed: Guests, visitors and employees (including service, administrative, and professional staff).

Location of the source of exposure: In landscaped areas, plants, baseboards, and any potentially infested areas.

Names of Proposition 65-listed chemicals involved and reason for listing: Mineral-based fertilizers and soil amendments used at the Property contain sewage sludge, lead (cancer and developmental, and male/female reproductive toxicity), cadmium and cadmium compounds (cancer, developmental and male reproductive toxicity), arsenic and its inorganic oxides (cancer and developmental toxicity), hexavalent chromium compounds (cancer) and other chemicals (cancer and developmental, and male/female reproductive toxicity). Pesticides used at the Property include arsenicals which contain inorganic arsenic compounds, including arsenic oxide (cancer and developmental toxicity), benomyl fungicide (developmental and male reproductive toxicity), captan (cancer), metham sodium (cancer), methyl bromide (developmental toxicity), and warfarin (developmental toxicity) and other chemicals (cancer, developmental and male/female reproductive toxicity).

LAW OFFICES OF GRAHAM & MARTIN LLP

Dated: October 2, 2003

By: \_\_\_\_\_  
Anthony G. Graham, Esq.

# GRAHAM & MARTIN, LLP

ATTORNEYS AT LAW

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IRVINE, CALIFORNIA 92614

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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 The Mckenzie Group and Consumer Defense Group, the “Noticing Parties” 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.

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Anthony G. Graham

**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*);
- 3) Certificate of Merit;
- 4) Supporting documents (*sent only 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:

Ed Weil, Deputy Attorney General  
Office of Proposition 65 Enforcement  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

Counsel for Violators:  
Malcolm Weiss, Esq.  
David Waite, Esq.  
Jeffer Mangels Butler & Marmaro  
1900 Avenue of the Stars, Seventh Floor  
Los Angeles, CA 90067

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

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

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

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