

# GRAHAM & MARTIN, LLP

ATTORNEYS AT LAW

3 PARK PLAZA, SUITE 2030  
IRVINE, CALIFORNIA 92614

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October 3, 2003

## **PROPOSITION 65 AMENDED 60-DAY NOTICE OF INTENT TO SUE FULLER ENTERPRISES AND ALL PERSONS AND ENTITIES NAMED ON EXHIBIT A HERETO PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.6**

This legal notice constitutes notification that Fuller Enterprises and all persons and entities named on Exhibit A hereto (hereinafter referred to collectively as the "Violator") has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (Cal. Health and Safety Code § 252495 *et seq.*). This notice is given by the Consumer Defense Group (hereinafter referred to as the "Noticing Party") which must be contacted through its legal representative Graham & Martin LLP, attn: Anthony G. Graham, Esq., 3 Park Plaza, Suite 2030, Irvine, CA 92614, (929) 474-1022.

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). The Noticing Party has previously sent a 60-Day Notice of Intent to Sue to the Violator as to certain chemicals it was exposing to certain persons without the provision of a clear and warning of that fact to the persons likely to be exposed prior to such exposure. This Amended Notice is intended to provide a Notice to the Violator of additional exposures which are permitted to occur by the Violator at the apartment facilities listed on Exhibit A hereto (hereinafter "the Facilities") which are owned and/or operated by the Violator. With this Amended Notice, the Noticing Party gives notice of the alleged violations to the Violator and 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 violation is alleged to have occurred. This Amended Notice covers all violations of Proposition 65 that are currently known to the Noticing Party from information now available to it. A copy of "The Safety Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," is provided with this Notice.

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

Proposition 65 requires that when a person in the course of doing business that employs ten or more employees, such as the Violator, has been or is knowingly and intentionally exposing persons to a detectable level of any chemical designated by the State of California to cause cancer or reproductive toxicity (the "Designated Chemicals"), it must, prior to such exposure, provide a clear and reasonable warning to the exposed persons (Health & Safety Code § 25249.6).

The Violator has chosen to allow its tenants, visitors, and their guests, and Violator's business invitees, contractors and employees at each of its facilities to be exposed to Designated Chemicals associated with its operations without such warnings and in doing so has violated the statute.

The Violator, in the ordinary course of business, knows, controls and intends much of the conduct and actions of its tenants, visitors, guests, contractors and employees at each of the facilities listed below on Exhibit B hereto (hereinafter, the "Properties"). The activities of the Violator including its employees and contractors, and the facilities and amenities provided at its Properties, expose tenants and their visitors and guests, and Violator's business invitees, contractors and employees to Designated Chemicals. The Violator's Properties include those listed in Exhibit A hereto.

Therefore, the Violator has knowingly and intentionally exposed its tenants and their visitors and guests, and Violator's business invitees, contractors and employees at each of the Properties to Designated Chemicals. Exposures to Designated Chemicals occur at the Violator's Properties in a variety of ways as described in detail below, including inhalation (breathing of designated chemicals in gaseous, vapor or aerosol 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 tenants and their visitors and guests and Violator's business invitees, contractors and employees who may not wish to be exposed, are not warned prior to exposure that they may be exposed to Designated Chemicals.<sup>1</sup>

#### **A. Environmental Exposures**

While in the course of doing business, at the locations in the attached Exhibit A, from at least October 3, 1999 through the date of this notice, the Violator has been and is knowingly and intentionally exposing tenants and their visitors and guests, and Violator's business invitees and contractors, and employees to Designated Chemicals listed below and known to the State of California to cause cancer, developmental toxicity or other reproductive harm without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code § 25249.6). The locations of the exposures are the environment in and around the Violator's Properties, Violator's activities and the amenities associated with the Properties as set forth in Section II Details of the Violation.

#### **B. Occupational Exposures**

While in the course of doing business from June 16, 1998 through the date of this notice, the Violator has been and is knowingly and intentionally exposing contractors and contractor's employees and Violator's employees to Designated Chemicals listed below and designated by the State of California to cause cancer, developmental toxicity or other reproductive harm without first giving clear and reasonable warning of that fact to the exposed

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<sup>1</sup> Each of these exposures relates to all entities and properties listed on Exhibit A hereto unless otherwise noted.

person (Health & Safety Code § 25249.6). Such Employees include, and are not limited to: the property's engineering staff, janitors, maids, housekeepers, concierge, bell staff, valets, security personnel, maintenance workers, service personnel, food service employees, administrative personnel, and professional personnel and business invitees and contractors working in and around the Violator's Property and its facilities and amenities as set forth in Section II Details of the Violation.

### **C. Product Exposures**

While in the course of doing business from October 3, 1999 through the date of this notice, Violator has been and is knowingly and intentionally exposing tenants and their visitors and guests, and Violator's business invitees, contractors and employees to products and materials containing Designated Chemicals designated by the State of California to cause cancer, developmental toxicity or other reproductive harm without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code § 25249.6). The product and material exposures include products and materials commonly in use at apartment properties, for example in maintenance and providing services to tenants. How tenants and their visitors and guests, and Violator's business invitees, contractors and employees are exposed to such products and materials, and the locations of such exposures, are set forth in Section II Details of Violations.

## **II. DETAILS OF VIOLATIONS:**

After appropriate due diligence and investigation of Violator's Properties and Activities, including review and verification of detailed information regarding exposures of tenants and their visitors and guests and the Violator's business invitees, contractors and employees, consultations with experts on such matters, formal and informal discovery and admissions by the Violator, such unlawful exposures occur in the following ways at the Violator's Properties identified.

### **A. Violations Associated With Tenant Activity**

The Violator permits its tenants to engage in certain activities which result in exposures of tenants, their guests and visitors, as well as to the Violator's employees, contractors and other visitors to Designated Chemicals. The tenant activities, which are of the type which occur at all apartment facilities, are those which are known to the Violator and could, if the Violator chose to do so, be prohibited. The Violator, for its own reasons, has chosen to not prohibit these activities. It is therefore responsible for the exposures which occur as a result of those activities. As such, it has a duty to provide a clear and reasonable warning constitute violations of Proposition 65.:

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

Short description: As noted in detail in the original Notice sent to the Violator (which is incorporated herein as if set forth in full), tobacco smoke and its by-products contain many chemicals that may be harmful if inhaled. The Violator

permits the smoking of tobacco products in the partments and in common public areas when it could prohibit such conduct. It has chosen to not do so.

Route(s) of exposure: Environmental exposure by the breathing of second-hand smoke (ingestion), and by its contact with skin and clothing.

Location or occupation of person(s) exposed: Tenants, their guests and visitors, and the Violator's employees (including service, maintenance, administrative, and professional staff), contractors and other business invitees who may enter apartments, common areas or designated smoking areas.

Location of the source of exposure: Apartments, common areas and various designated areas around the property where smoking is either authorized or not prohibited.

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

## 2. Use of Combustible Products and Materials by Tenants

Short description: The Violator permits tenants to use certain combustible products and materials including barbecues, hibachis, oil lamps, stoves and lanterns, sterno cooking fuels, gas stoves, patio heaters, lamps and lanterns, as well as candles and matches. Each of these products when used generate Designated Chemicals to which tenants, visitors and other persons are exposed.

Route(s) of exposure: Environmental exposure through inhalation of gaseous, vaporous or aerosol combustion product emissions, and in certain cases through skin contact and absorption or through hand-to-mouth ingestion.

Location or occupation of person(s) exposed: Tenants and their guests and visitors, as well as Violator's business invitees, contractors and employees, who are in and around an apartment or common area in which a tenant is engaged in using combustibles.

Names of materials containing Proposition 65-listed chemicals and reason for listing:

- Charcoal, artificial logs and fire starters (for example Duraflame products) and wood burning in barbecues, hibachis and fireplaces emit carbon monoxide (developmental toxicity), monoxide (developmental toxicity), soots and tar (cancer), benzene (cancer, developmental toxicity and other reproductive harm), creosotes (cancer) and other chemicals (cancer and developmental toxicity and other reproductive harm).

- Charcoal lighter fluid, and the burning of alcohol, kerosene and other liquid combustibles in stoves and lanterns emit carbon monoxide (developmental toxicity), soots and tar (cancer), benzene (cancer, developmental toxicity and other reproductive harm), acetaldehyde (cancer) and formaldehyde (cancer).

- Sterno Cooking Fuel including but no limited to those manufactured by Candle Corporation of America, Colgate Palmolive, Western Family

Foods, Ecolab and other makers contains ethyl alcohol and other chemical ingredients and when ignited emits soots, tars and mineral oils (cancer), acetaldehyde (cancer), benzene (cancer, developmental toxicity and other reproductive harm), carbon monoxide (developmental toxicity), and formaldehyde (cancer).

- Fireplaces, patio heaters, kitchen stoves and ovens, gas heaters and portable stoves and lanterns which use natural gas, compressed natural gas (CNG), liquified natural gas (LNG), propane and other pressurized fuel gases emit carbon monoxide (developmental toxicity), formaldehyde (cancer), soots and tars (cancer), benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity), and radon (cancer) according to information disseminated by Pacific Gas and Electric (PG&E) and Coleman, Inc.
- Candle combustion generates soots (cancer), benzene (cancer, developmental toxicity and other reproductive harm). Some candlewicks contains lead and emit lead and lead compounds (cancer and developmentally toxicity and other reproductive harm).
- Matches contain and their ignition emits arsenic and its compounds (cancer and developmental toxicity), lead and lead compounds (cancer, developmental toxicity and other reproductive harm), and carbon monoxide (developmental toxicity).

**B. Violations Associated with Apartment Property Construction Materials**

4. Apartment Properties Construction Materials

Short description: Like all apartment owners and managers, the Violator has chosen to use construction materials at the Facilities which contain Designated Chemicals. The presence of those chemicals results in a knowing and intentional exposure to persons as defined in Proposition 65 both through normal degradation over time or when the materials are disturbed during repair or construction activities.

Route(s) of exposure: Environmental and occupational exposures to construction materials occur through inhalation of gaseous, vaporous or aerosol emissions and in some cases skin absorption and/or ingestion through hand-to-mouth contact. Such exposures occur either through the continuance emission or leaching of Designated Chemicals as construction materials degrade or deteriorate; in other cases the construction materials cause an exposure to Designated Chemicals when either inadvertently or intentionally disturbed during repairs, maintenance or renovations.

Location or occupation of person(s) exposed: Tenants and their guests and visitors, as well as Violator's business invitees, contractors and employees, who are in and around the Facilities or who engage in work with and around construction materials which contain Designated Chemicals are exposed to Designated Chemicals as follows:

Names of materials containing Proposition 65-listed chemicals and reason for listing:

The Violator uses two kinds of roofing materials which contain Designated chemicals which, when deteriorated or undergoing repair/replacement, result in emissions of such chemicals to which the persons are exposed.

First, the Violator uses built-up roofs containing fiberglass (ceramic fibers-cancer) felting and insulation that can be released through deterioration and/or cutting/disturbing. These roofs also contain coal tar or petroleum asphalt which contain the following Designated Chemicals that can be released from hot tar or asphalt during installation and repair or as vapor or particulate during removal/renovation: benz[a]anthracene, chrysene, toluene diisocyanate, formaldehyde (gas), 5-methylchrysene, nickel and nickel compounds, dichloromethane (methylene chloride), benzene, lead, benzo[b]flouranthene, bezo[k]flouranthene, benzo[a]pyrene, indeno[1,2,3-c, d-]pyrene, acetaldehyde, beryllium and beryllium compounds, arsenic (inorganic arsenic compounds), cadmium and cadmium compounds, chromium (hexavalent compounds), tetrachloroethylene (perchloroethylene), trichloroethylene, and dibenz[a,h]anthracene (all of the preceding Designated Chemicals cause cancer); and toluene, carbon disulfide, benzene, lead, mercury and mercury compounds, arsenic and cadmium (all of the preceding Designated Chemicals cause birth defects or reproductive harm). Built-up roof installation and repair uses sand and aggregate, which contain crystalline silica (cancer).

Second, the Violator uses membrane roofing systems comprised of polyvinyl chloride (PVC) membrane or sheet, usually with black pigmentation and with thermal stabilizing and plasticizing chemicals to inhibit degradation. Such PVC plastic contains the following designated chemicals: vinyl chloride monomer (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm) and diethylhexyl phthalate (cancer). Membrane roofing systems also use solvents and adhesives which contain benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity) and methylene chloride (cancer). Portable water conveyance and dispensing systems utilize metallic components (such as steel water pipes, water meters, solders used in copper plumbing, brass fittings and fixtures) Lead is a Designated Chemcials as both a carcinogen and a reproductive toxin.

The Violator uses insulation at the Facilities which results in exposures of persons to Designated Chemcials due to emission sduring normal degradation or deterioration when it is disturbed during repair maintenance or renovation. The insulation used is, first, urea-formaldehyde insulation which contains and emits formaldehyde gas (a

carcinogen) and second, fiberglass, which contains ceramic fibers (also carcinogens).

The Violator uses structural construction materials used in walls, floors, ceilings and outside cladding which contain Designated Chemicals and which are released as gases or vapors during normal degradation or deterioration and as dust or particulate when disturbed during repairs, maintenance or renovation. Such materials include particle board, plywood and adhesives with urea formaldehyde resin which contains formaldehyde gas (cancer), vapor barriers, exterior plastic cladding, plastic window frames, fascia boards and window sills, and plastic conduits and fittings for electrical systems and HV/AC duct work made from poly vinyl chloride (PVC), which contains vinyl chloride monomer (cancer), diethylhexyl phthalate (cancer), and metallic pigments which contain lead (cancer, developmental toxicity and other reproductive harm) and cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and cobalt and cobalt oxide (cancer). Exterior stucco at the Facilities contain crystalline silica (cancer). Treated woods used for exterior and soil-contact applications contain arsenic and arsenic compounds, inorganic oxides (cancer, developmental toxicity and other reproductive harm), pentachlorophenol (cancer), and creosote (cancer).

The Violator uses paints, coatings and associated solvents, additives and texturizers which contain Designated Chemicals to which persons are exposed due to natural degradation or deterioration of these materials, during repair and renovation work and can result in foreseeable childhood exposures due to direct ingestion or indirect ingestion through hand-to-mouth contact. The following materials used at the Facilities cause exposures to Designated Chemicals: use and presence of interior and exterior paint containing lead (cancer, developmental toxicity and other reproductive harm), benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity) paint texturizers which contain crystalline silica (cancer), and wood stains which contain benzene (cancer, developmental toxicity and other reproductive harm) and wood finishers which contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity).

The Violator has in place common area furnishings, which cause exposures to Designated Chemicals due to the materials used in their manufacture and emissions from such furnishings or the presence of Designated Chemicals on the surface of such furnishings. The Facilities' furnishings include furniture and carpets in common areas, and administrative offices. Carpeting and furniture constructions materials include foams, fabrics, coatings, rubber parts and plastics and vinyl which contain Designated Chemicals including but not limited to the following: Foams used in couches, seat cushions, carpet pads contain and emit methylene chloride (cancer), toluene diisocyanate (cancer), and soots, tars and mineral oils (cancer). The adhesives used to install furnishings contain Designated Chemicals including but not limited to toluene (developmental

toxicity), benzene (cancer, developmental toxicity and other reproductive harm), formaldehyde (cancer), and toluene (developmental toxicity).

**C. Apartment Utilities and General Facility Services**

The Violator provides heating, hot water, and parking facilities which cause knowing and intentional exposures to Designated Chemicals.

5. Natural gas, liquid fuel gases and fuel oil conversion in furnaces, boilers, hot water heaters, apartment and patio heaters and similar equipment.  
Short description: The Violator provides heating and hot water by the use of natural gas, other fuel gases and fuel oil to operate furnaces, boilers, hot water heaters, space heaters and patio equipment either on an apartment-wide basis or in certain common areas, or in individual apartment units. The Violator is aware that such activities cause exposures to Designated Chemicals, through information provided by natural gas and other fuel vendors.

Route(s) of exposure: Inhalation.

Location of occupation of person(s) exposed: Natural gas, liquid fuel gas, and fuel oil release Designated Chemicals into the air through volatilization and when such fuels are combusted. Persons including tenants, their visitors and guests and Violator's business invitees, contractors and employees experience environmental exposure whenever present in areas where gaseous or liquid fuels are stored, vented and combusted including in apartments, common areas and in the general environment in and around the Facilities.

Names of materials containing Proposition 65-listed chemicals and reason for listing:

- Natural Gas and other liquid fuel gases including but not limited to Compressed Natural Gas (CNG), Liquefied Natural Gas (LNG) and Liquefied Petroleum Gas (LPG) and Propane contain benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity), and radon (cancer); when such fuels are burned, combustion products are created and emitted which include, but are not limited to: carbon monoxide (developmental toxicity), formaldehyde (cancer), acetaldehyde (cancer) and soots (cancer) according to information disseminated by suppliers including PG&E and Coleman, Inc.
- Fuel Oil contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity) and when burned emits carbon monoxide (developmental toxicity), soots and tars (cancer), formaldehyde (cancer) and acetaldehyde (cancer).

6. **Parking Facilities and Designated Loading/Unloading Locations Cause Exposure to Vehicle Emissions.**  
**Short description:** Parking facilities including, but not limited to, parking lots, parking structures, and substructure or subterranean parking areas cause exposures to designated chemicals emitted from vehicle exhausts.  
**Route(s) of exposure:** Exposures to vehicle exhaust emissions are generally via inhalation.  
**Location of exposure and person(s) exposed:** Exposures occur when persons enter parking facilities and when they are in the general environment. The persons exposed include tenants and their guests and visitors, and Violator's business invitees, contractors and employees.  
**Names of materials containing Proposition 65-listed chemicals and reason for listing:** Diesel engines emit diesel engine exhaust (cancer). Gasoline engines emit gasoline engine exhaust containing benzene (cancer).

**D. Apartment Property Cleaning and Maintenance Activities**

7. **Apartment Cleaning and Facility Maintenance**  
**Short description:** The Violator provides cleaning and maintenance services upon lease renewal or upon leasing by a new tenant. Persons are exposed to Designated Chemicals during or after the cleaning or maintenance activity.  
**Routes of exposure:** Exposures to Designated Chemicals contained in cleaning and maintenance materials are through inhalation, skin absorption and skin contact followed by ingestion due to hand-to-mouth contact, especially by children.  
**Location of exposure and person(s) exposed:** The location of exposures to cleaning and maintenance chemicals is within individual apartment units that have been cleaned or maintenance activities performed by Violator or persons under its control. The persons exposed include: tenants and their guests and visitors, and Violator's business invitees, contractors and employees.  
**Names of materials containing Proposition 65-listed chemicals and reason for listing:**  
Pesticides used at the Facilities include include the following: Wilbur Ellis Black Leaf Wasp and Hornet Killer, Ortho Hornet and Wasp Spray and United Industries Hot Shot Ant and Roach Spray which contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Chacon Chemical Insecticide which contains p-dichloro benzene (cancer), Agri-Enysire Corp. Insecticide which contains mancozeb (cancer) and nabam (cancer); Grants Kills Ants which contains arsenic trioxide, an inorganic arsenic oxide compound (cancer and developmental toxicity); Spectracide Plus Immunox Insect and Disease Control in Aerosol and Concentrate which contains myclobutanil (developmental toxicity and other reproductive harm); Ortho Funginex Rose and Shrub Disease Control and Orthenex Garden Insect

and Disease Control which contain triforine (developmental toxicity); Ortho Outdoor Insect Fogger which contains resmethrin (developmental toxicity); MAKKI Term Out, Termite Roach and Ant which contains resmethrin (developmental toxicity); Greenlight Bermuda Grass Killer which contains fluazifopbutyl (developmental toxicity); Greenlight Fung-Away Systemic Fungicide which contains thiophanatemethyl (reproductive harm); Gordon's Trimec Plus which contains an inorganic arsenic compound (cancer); and Lilly Captan Fungicide which contains captan (cancer). Similarly, all fertilizers and soil amendments applied during landscaping and which may remain thereafter on surfaces or may be emitted into the air during application or thereafter contain Designated Chemicals. Such fertilizing materials include, but are not limited to, mineral-based fertilizers that contain lead acetate (cancer), lead (cancer and developmental toxicity and other reproductive harm), cadmium and cadmium compounds (cancer and developmental toxicity and other reproductive harm), arsenic and its inorganic oxides (cancer and developmental toxicity), hexavalent chromium compounds (cancer), and mercury and mercury compounds (developmental toxicity), 3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) (cancer and developmental toxicity), Cobalt[II]oxide (cancer), hexachlorodibenzodioxin (cancer), nickel and certain nickel compounds (cancer) polychlorinated biphenyls (cancer and developmental toxicity), polychlorinated dibenzofurans (cancer), radionuclides (cancer) and crystalline silica (cancer).

Cleaning and Janitorial Activities permitted by the Violator which result in Designated Chemical exposure including but not limited to: Tile and other floor surface polishing generates dust containing crystalline silica (cancer) and ceramic fibers (cancer); polishing of metal surfaces especially brass generates dust containing lead (cancer, developmental toxicity and other reproductive harm).

Hand Tools used by Violator's contractors and employees contain Designated Chemicals. All hand tools contain metals or are plated with metals which contain lead (cancer, developmental toxicity and other reproductive harm), hexavalent chromium (cancer), nickel and certain nickel compounds (cancer), cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm). 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). Emissions of materials containing Designated Chemicals from Power Tools Use including but not limited to skill saws, circular saws, table saws, band saws, mitre saws, sabre saws and jig saws; sanders, buffers and polishers, drills, planers and routers can contain any Designated Chemical contained on or in the construction materials, surface coating and paints being shaped or sanded or from any abrasive material used. The most common designated chemicals include:

crystalline silica (cancer), lead (cancer, developmental toxicity and other reproductive harm), cadmium (cancer), asbestos (cancer and developmental toxicity and other reproductive harm), arsenic and its inorganic oxides (cancer and developmental toxicity), hexavalent chromium compounds (cancer), cobalt oxide (cancer) and nickel and certain nickel compounds (cancer).

Operation of Internal Combustion Engine Powered Landscaping Equipment including, but not limited to, lawn mowers, edgers, weed eaters and leaf blowers which emit gasoline engine exhaust (cancer).

GRAHAM & MARTIN LLP

Dated: November 17, 2003

## 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 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 November 16, 2003.

## **EXHIBIT A**

Property Name	Legal Entity LLC
Bayfair	Bayfair East Apartments Fund V1
Biscayne	Biscayne Apartments LLC
BonAire	Bon Aire Apartments LLC
Chateau	Chateau Apartments LLC
Coral Gardens	Coral Garden Apartments LLC
Coronado	Coronado Apartments LLC
Fremont Arms	Fremont Arms Apartments LLC
Garden Court	Garden Court Apartments LLC
Marina Haven	Marina Haven Apartments LLC
Marina Plaza	Marina Plaza Apartments LLC
Mountain View	Mountain View Apartments LLC
Parkway	Parkway Apartments LLC
Pentagon	Pentagon Apartments LLC
Peppertree	Peppertree Apartments LLC
Pinebrook	Pinebrook Apartments LLC
Quail Hill	Quail Hill Apartments LLC
Ramblewood	Ramblewood Apartments LLC
Royal Gardens	Junction Ave. LLC
Schafer Road	Schafer Road Apartments LLC
Summerhill Terrace	Summerhill Terrace Apartments LLC
Tropicana	Tropicana Apartments LLC
Vista Creek	Fuller Properties LLC

## **EXHIBIT B**

BAYFAIR 135 UNITS  
18077 ASHLAND AVE.  
SAN LORENZO, CA 94580

BISCAYNE 64 UNITS  
3819 EAST AVE.  
LIVERMORE, CA 94550

BON AIRE APTS. 42 UNITS  
20499 SANTA MARIA  
CASTRO VALLEY, CA 94546

CHATEAU 13 UNITS  
26825 COLLETTE ST.  
HAYWARD, CA 94554

CORAL GARDENS 46 UNITS  
805 SORENSON RD.  
HAYWARD, CA 94554

CORONADO 48 UNITS  
3777 MOWRY AVE.  
FREMONT, CA 94538

PARKWAY 20 UNITS  
3755 MOWRY AVE.

FREMONT ARMS 48 UNITS  
37811 FREMONT BLVD.  
FREMONT, CA 94538

GARDEN COURT 63 UNITS  
557(A) - 559(B) BUENA VISTA AVE.  
ALAMEDA, CA. 94501

MARINA HAVEN 35 UNITS  
2712 MARINA BLVD.  
SAN LEANDRO, CA 94577

MARINA PLAZA 36 UNITS  
2777 MARINA BLVD.  
SAN LEANDRO, CA 94577

MT. VIEW 162 UNITS  
1220-1240 MONUMENT BLVD.  
CONCORD, CA 94520

PENTAGON APTS. 81 UNITS  
37960 FREMONT BLVD.  
FREMONT, CA 94536

PEPPERTREE APTS. 68 UNITS  
2811 MCKEE ROAD  
SAN JOSE, CA 95127

PINEBROOK APTS 150 UNITS  
35995 FREMONT BLVD  
FREMONT, CA 94536

QUAIL HILL 96 UNITS  
20800 LAKE CHABOT RD.  
CASTRO VALLEY, CA 94546

RAMBLEWOOD 121 UNITS  
38800 HASTINGS ST.  
FREMONT, CA 94536

ROYAL GARDENS 46 UNITS  
434 JUNCTION AVE.  
LIVERMORE, CA 94550

SCHAFFER ROAD 10 UNITS  
523 SCHAFFER ROAD  
HAYWARD, CA 94554

SUMMERHILL TERRACE 103 UNITS  
15267 HESPERIAN BLVD.  
SAN LEANDRO, CA 94578

TROPICANA APTS. 44 UNITS  
601 SORENSON RD.  
HAYWARD, CA 94554

VISTA CREEK APTS. 50 UNITS  
22432 CENTER ST.  
CASTRO VALLEY, CA 94546

## 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: November 17, 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

Dennis Fuller, President  
Fuller Enterprises  
3170 Crow Canyon Place, Ste. 165  
San Ramon, CA 94583

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

Contra Costa County DA  
727 Court Street  
Martinez, CA 94553

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

Alameda County DA  
1225 Fallon Street  
Oakland, CA 94612

Santa Cruz County DA  
701 Ocean Street  
Santa Cruz, CA 95061

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

Dated: November 17, 2003

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