

# CONSUMER DEFENSE GROUP ACTION

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## 60-Day Notice of Intent to Sue Patmon Company, 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 the Mary E. Carter, President and CEO of Patmon Company, Inc., a California corporation (hereinafter, "Patmon"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through the following entity: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

This Notice is intended to inform Patmon 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 facilities listed on Exhibit A hereto (which are owned/managed by Patmon) (hereinafter "Facilities") that Patmon (1) permits the smoking of tobacco products at Facilities, which exposes residents, visitors and employees to tobacco smoke in the areas where smoking is permitted; and, (2) permits the operation of motor vehicles at Facilities, which exposes residents, visitors and employees to diesel and gasoline exhaust fumes, and the chemicals contained in those fumes, in the areas where such vehicles are allowed to be operated.

### **Summary of Violation:**

Proposition 65 provides that when a party, such as Patmon, has been and is knowingly and intentionally exposing its residents, visitors, employees and the general public to chemicals designated by the State of California to cause cancer and reproductive toxicity ("the Designated Chemicals") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons (Health & Safety Code Section 24249.6). Tobacco smoke, as well as the constituent chemicals contained in tobacco smoke, are Designated Chemicals. Similarly, diesel and gasoline exhaust fumes contain Designated Chemicals.

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

Persons representing CDG have personally visited Facilities during the time period Bbetween October 2002 and October 2003 (hereinafter referred to as the "Investigation Period"). During those investigations CDG discovered that Facilities are owned and/or managed by Patmon, and that Patmon has more than nine employees. Those investigations showed that Patmon has chosen to allow its residents, visitors and employees at such Facilities to smoke tobacco products, and has specifically chosen to allow smoking in certain areas. Those areas are the apartments, the lobbies, corridors and hallways of floors

where apartments where smoking is allowed are located, areas adjacent to pools, entrances and common areas where smoking is permitted, public walkways and parking areas where smoking is permitted. Further, those investigations showed that Patmon has chosen to allow its residents, visitors and employees at Facilities to operate motor vehicles in certain areas, the driveways and parking areas.

In Facilities and areas noted Patmon has chosen to allow its residents, visitors and employees to be exposed to: (1) tobacco smoke via the breathing of second hand tobacco smoke and via contact with their skin and clothing; and, (2) diesel and gasoline exhaust fumes via the breathing of such fumes (inhalation) and by contact with the skin and clothing (dermal contact). Evidence that (1) the smoking of tobacco products was taking place and had taken place at Facilities, and (2) that the operation of motor vehicles (and thus exposures to diesel and gasoline exhaust fumes) was taking place at Facilities, was seen by the investigators for CDG at Facilities during the Investigation Period. The investigation by CDG at Facilities showed that Patmon 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 Facilities, in the parking areas, in the areas leading into Facilities from the parking areas, at the entrances to apartment buildings or floors where apartments where smoking is permitted are located, or in or near the walkways in Facilities, so that its residents, 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 tobacco smoke. The investigation by CDG at the Facilities showed that Patmon has specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings at the parking areas or in the areas leading into Facilities from the parking areas to warn its residents, visitors and employees, who may not wish to be exposed, that, upon entering any of those areas, they may be exposed to diesel and/or gasoline exhaust fumes, and chemicals 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 Patmon has owned and/or controlled Facilities prior to the Investigation Period, Patmon has failed to post clear and reasonable warning signs at 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 Patmon) is four years, this Notice is intended to inform Patmon 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.

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 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 Facilities, during the Investigation Period, and for up to four years prior to that time, Patmon has been and is knowingly and intentionally exposing its residents and the public to tobacco smoke 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 persons (Health & Safety Code Section 24249.6). The source of exposure is (1) tobacco smoke caused by the smoking of tobacco products by persons who Patmon permits to smoke tobacco products at Facilities, and (2) diesel and gasoline exhaust fumes produced by the operation of motor vehicles which Patmon permits at Facilities. The areas at Facilities where residents, visitors and employees are being exposed to tobacco smoke are the apartments, the lobbies, corridors and hallways of floors where apartments where smoking is allowed are located, areas adjacent to pools, entrances and common areas where smoking is permitted, public walkways and parking areas where smoking is permitted. The areas at

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

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

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

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

Dated: November 19, 2003

By: \_\_\_\_\_

<p><b>Bridle Path Place</b></p> <p>1619 Bridle Path</p> <p>Stockton, CA 95210</p> <p>138 Apartments</p>	<p><b>Country Club Village Apartments</b></p> <p>2733 Country Club Blvd</p> <p>Stockton, CA 95204</p> <p>182 Apartments</p>
<p><b>Iron Horse Apartments</b></p> <p>2506 Country Club Blvd</p> <p>Stockton, CA 95204</p> <p>184 Apartments</p>	<p><b>Westpointe Apartments The Hunt Club</b></p> <p>6465 West Lane</p> <p>Stockton, CA 95210</p> <p>278 Apartments</p>

## 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 19, 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 and 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: November 19, 2003

Place of Mailing: Irvine, California

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

Patmon Company, Inc. 1919 Grand Canal Blvd., Ste. A-1 Stockton, CA 95207 Attention: Mary E. Carter	California Attorney General (Proposition 65 Enforcement Division) P.O. Box 944255 Sacramento, CA 94244-2550
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San Joaquin DA  
225 W. Elm Street #C  
Lodi, CA 95240

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

Dated: November 19, 2003