

60-Day Notice of Intent to Sue under Health and Safety Code Sections 25249.5 et seq.

Larry Bryant and George Rodriguez, who must be contacted through the entity below, give this Notice:

Reuben Yeroushalmi, Esq.

Daniel J. Hartman, Esq.

YEROUSHALMI & ASSOCIATES

3700 Wilshire Blvd., Suite 480

Los Angeles, CA 90010

Telephone: 213-382-3183

Facsimile: 213-382-3430

Email: lawfirm@yeroushalmi.com

Larry Bryant and George Rodriguez hereby notify **Martin Suman and Sara Suman, FBO Martin and Sara Suman Trust dated June 2, 1992, La Maison Apartments, Orly Maciborski and Richard Maciborski, R.O.M. Investments, Nidal A. Barakat and Adil A. Barakat, Villa Jenie, Baraka -Allah Management, and Nidal A. Barakat Family Trust dated January 2, 1997** (hereinafter referred to collectively as "Violators") that they have violated the Safe Drinking Water and Toxic Enforcement Act. (Health & Saf. Code, § 25249.6 et seq.) (Hereinafter referred to collectively as "Proposition 65"). Violators violated Proposition 65 by exposing their tenants, employees, and visitors, during their ordinary course of business, to asbestos (Chemical Abstract Service number 1332214, which originally appeared on the Chemicals Known to the State of California to Cause Cancer or Reproductive Toxicity list, published by the Office of Environmental Health Hazard Assessment, on February 27, 1987. The alleged violations of Proposition 65 commenced on June 6, 2000, more than one year after the date asbestos was included in the list), a chemical listed by the State of California under California Code of Regulations, title 22, section 12306 to cause cancer without providing clear and reasonable warnings of such so that persons would be aware that if they entered the 44-unit apartment building at 1730 North Gramercy Place, Los Angeles, California (hereinafter referred to as the "Gramercy Place Apartment Building"), owned and/or operated and/or controlled by Violators, they would likely be exposed to asbestos. This Notice is designed to encourage Violators to comply with Proposition 65 by posting such warnings and to collect penalties available under Proposition 65.

BACKGROUND:

Martin Suman and Sara Suman, who were doing business as **La Maison Apartments**, as individuals, as partners, and as trustees of **FBO Martin and Sara Suman Trust dated June 2, 1992**, owned the Gramercy Place Apartment Building from about September 13, 1994, to about February 27, 2003.

Orly Maciborski and Richard Maciborski, who were doing business as **R.O.M. Investments**, as individuals and as partners, and who were acting as property managers for the Sumans, managed the Gramercy Place Apartment Building from about September 13, 1994, to about February 27, 2003.

Nidal A. Barakat and Adil A. Barakat, who were doing business as both **Villa Jenie and Barakat -Allah Management**, as individuals, as partners, and as trustees of **Nidal A. Barakat Family Trust dated January 2, 1997**, have owned the Gramercy Place Apartment Building since about February 27, 2003.

While in the course of doing the business of owning, renting, and managing the Gramercy Place Apartment Building during the times of their respective ownership and/or management, Violators violated Proposition 65 by knowingly and intentionally exposing my clients **Larry Bryant** and **George Rodriguez**, who are tenants of the Gramercy Place Apartment Building, the other tenants in the Gramercy Place Apartment Building, people who visited the Gramercy Place Apartment Building, and handymen and other employees who worked in the Gramercy Place Apartment Building, to **asbestos**, a carcinogen known to the State of California to cause cancer without having first given a clear and reasonable warning to the public and to the exposed persons that they were being exposed to **asbestos** dust and fibers.

The recommended method of giving such warning to the tenants and the public is specified in Section 12601 of Title 22 of the California Code of Regulations.

Environmental Exposures

The primary route of environmental exposure, from June 6, 2000, to January 15, 2004, to the **asbestos**-containing material on the ceilings in the Gramercy Place Apartment Building was through the inhalation of **asbestos** dust and fibers naturally released from the **asbestos**-containing ceiling material into the indoor air of the Gramercy Place Apartment Building and its individual apartment units over time and as a result of physical disturbances of the **asbestos**-containing ceiling material. As was the case both for **Larry Bryant**, who was palpably exposed to **asbestos** dust and fibers on dates including July 2, 2003, by an uncertified handyman employed by **Nidal A. Barakat** in attempting to fix the ceiling of **Larry Bryant's** apartment, which was damaged by rainwater from a leaking roof, and for **George Rodriguez**, who has been exposed to **asbestos** dust and fibers for a number of years from the constant jarring and vibration of his ceiling day and night by occupants of the apartment above his apartment. The persons exposed include residents of the Gramercy Place Apartment Building and their guests. **Larry Bryant** and **George Rodriguez** did not contend that the exposures extended beyond the property owned and/or controlled by Violators.

Occupational Exposures

The primary route of occupational exposure, from June 6, 2000, to January 15, 2004, to the **asbestos** in the Gramercy Place Apartment Building was through the inhalation of **asbestos** dust and fibers released from both the **asbestos**-containing material on the ceilings and the **asbestos**-containing vinyl and linoleum floor coverings in the kitchens and bathrooms of vacant apartments being renovated and into the indoor air of the Gramercy Place Apartment Building and its individual apartment units. The persons exposed include employees of Violators, including those who maintain and repair the building.

The exposure resulted from the physical disturbance of those **asbestos**-containing materials by handymen employed by **Nidal A. Barakat** who have, during renovations over the past year, torn out vinyl and linoleum floor coverings from the kitchens and bathrooms of all the vacant apartments and have illegally dumped the resulting **asbestos**-containing waste material into the trash chutes and trash-chute rooms on each of the floors of the Gramercy Place Apartment Building, and in the process have strewn the **asbestos**-containing waste material on the carpeting in the hallways, the lobby, and in the trash-bin area of the lower-level garage, thus contaminating the premises and causing environmental exposure to the tenants.

The routes of both environmental and occupational exposures to the **asbestos** is through the ingestion of and dermal contact with the **asbestos** that eventually has ended up contaminating all surfaces and areas of the Gramercy Place Apartment Building and its individual apartment units from the natural release of the **asbestos** over the course of time, from disturbances of the asbestos-containing materials, and from the repair and renovation of the apartments by handymen who were uncertified and unqualified to disturb the asbestos or work with asbestos-containing building materials.

The South Coast Air Quality Management District and independent laboratories have confirmed the presence of **asbestos** in the textured acoustic material on the ceilings of the Gramercy Place Apartment Building, including units 315 and 112.

The **asbestos**-containing ceiling material was applied as a coating on all the ceilings throughout the Gramercy Place Apartment Building when the building was constructed in or about 1971.

In addition, **asbestos** is known to be present in the old vinyl and linoleum floor coverings in the kitchens and bathrooms of the apartments, which were laid down and installed in or about 1971 when the Gramercy Place Apartment Building was constructed.

Larry Bryant discovered there was about five percent of chrysotile asbestos (white asbestos) in the textured acoustic material on the ceilings in his apartment and the Gramercy Place Apartment Building.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

Proposition 65 requires that notice and intent to sue be given to the violator(s) 60 days before the suit is filed. With this letter, **Larry Bryant** and **George Rodriguez** give notice of the alleged violations to the Violators and the appropriate governmental authorities. The notice covers all violations of Proposition 65 that are currently known to **Larry Bryant** and **George Rodriguez** from information now available to them. With the copy of this notice submitted to the violator, a copy of the following is attached: *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.*

Dated: Thursday, January 15, 2004

YEROUSHALMI & ASSOCIATES

By:)

Office of Environmental Health
Hazard Assessment
California Environmental Protection Agency

The Safe Drinking Water and Toxic
Enforcement Act of 1986
(Proposition 65): A Summary

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were

exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulation (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$ 2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION. . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

AUTHORITY:

Note: Authority cited: Sections 25249.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.

HISTORY:

1. New section and Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment of section and Appendix A filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Daniel J. Hartman, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
4. 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.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 14, 2004

By: _____

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 3700 Wilshire Blvd., Suite 480, Los Angeles, CA 90010.

I SERVED THE FOLLOWING:

- 1.) 60-Day Notice of Intent to Sue under Health & Safety Code Section 25249.6
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to violators*)

by enclosing a true copy of the same, along with an unsigned copy of this declaration, 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: Thursday, January 15, 2004

Place of Mailing: Los Angeles, CA

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

California Attorney General
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

Martin and Sara Suman
FBO Martin and Sara Suman Trust
La Maison Apartments
3632 Fawndale Place
Sherman Oaks, CA 91403.

L.A. County. Dist. Atty.
Attn: Stanley Williams, Deputy D.A.
Environmental Law Section
201 North Figueroa St., Ste. 1200
Los Angeles, CA 90012

Orly Richard Maciborski
R.O.M. Investments
5464 Sunset Blvd, Suite 535
Los Angeles, CA 90028.

L.A. City Atty.
Attn: Prop 65 Coordinator
800 City Hall East
200 North Main Street
Los Angeles, CA 90012

Nidal A. and Adil A. Barakat
Nidal A. Barakat Family Trust
Villa Jenie, Baraka -Allah Mgmt
7440 Sepulveda Blvd., Ste 331
Van Nuys, CA 91405

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

Dated: January 15-2004