

# CONSUMER DEFENSE GROUP ACTION

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**GRAHAM & MARTIN, LLP**  
3 Park Plaza, Suite 2030  
Irvine, CA 92614  
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## 60 Day Notice of Intent to Sue AF Evans Company, Inc. and Evans Property Management, 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 Arthur Evans, President of AF Evans Company, Inc. ("AF Evans Co."), on behalf of AF Evans Co. and Evans Property Management ("EPM"), (hereinafter AF Evans Co. and EPM are collectively referred to as the "Violator"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through its attorneys: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

This Notice is intended to inform the Violator 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 the Violator) (hereinafter "the Facilities") that the Violator (1) permits the smoking of tobacco products at the Facilities, which exposes customers, visitors and employees to tobacco smoke in the areas where smoking is permitted; and, (2) permits the operation of motor vehicles at the Facilities, which exposes customers, 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 the Violator, has been and is knowingly and intentionally exposing its customers, visitors, employees and the general public to chemicals designated by the State of California to cause cancer and reproductive toxicity ("the Designated Chemicals") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons (Health & Safety Code Section 24249.6). Tobacco smoke, as well as the constituent chemicals contained in tobacco smoke, are Designated Chemicals. Similarly, diesel and gasoline exhaust fumes contain Designated Chemicals.

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

Persons representing CDG have personally visited each of the Facilities in the period between January 2003 and March 2004 (hereinafter referred to as the "Investigation Period"). During those investigations CDG discovered that the Facilities are owned and/or managed by the Violator, and that the Violator has more than nine employees. Those investigations showed that the Violator has chosen to allow

its customers, visitors and employees at each of the 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 the Violator has chosen to allow its customers, visitors and employees at each of the Facilities to operate motor vehicles in certain areas, the driveways and parking areas.

In the Facilities and areas noted the Violator has chosen to allow its customers, 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 the Facilities, and (2) that the operation of motor vehicles (and thus exposures to diesel and gasoline exhaust fumes) was taking place at the Facilities, was seen by the investigators for CDG at the Facilities during the Investigation Period. The investigation by CDG at the Facilities showed that the Violator has specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings at any of the entrances to the Facilities, in the parking areas, in the areas leading into the 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 the Facilities, so that its customers, visitors and employees, who may not wish to be exposed, can be warned that, upon entering any of those areas, they may be exposed to tobacco smoke. The investigation by CDG at the Facilities showed that the Violator 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 the Facilities from the parking areas to warn its customers, 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 the Violator has owned and/or controlled the Facilities prior to the Investigation Period, and during the Investigation Period itself, the Violator has failed to post clear and reasonable warning signs at the Facilities in compliance with Proposition 65. Given that the maximum period of potential liability pursuant to Proposition 65 and Business & Professions Code §17200 (which are the operative statutes pursuant to which a complaint will be filed against the Violator) is four years, this Notice is intended to inform the Violator that it has been in violation of Proposition 65 from the time period from four years prior to the last date of the Investigation Period noted above for each day on which it was the owner or operator of the Facilities, for every day upon which the Violator was the owner/operator of any facility listed on Exhibit A.

The written reports prepared by the investigators for CDG, prepared contemporaneously with the investigations conducted during the Initial Investigation Period, together with supporting photographic and other evidence from the Facilities, has been provided to the Office of the Attorney General responsible for Proposition 65 enforcement.

### **Environmental Exposures:**

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, the Violator has been and is knowingly and intentionally exposing its customers 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 the Violator permits to smoke tobacco products at the Facilities, and (2) diesel and gasoline exhaust fumes produced by the operation of motor vehicles which the Violator permits at the Facilities. The areas at the Facilities where customers, 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 the Facilities where customers, visitors and employees are being exposed to diesel and gasoline exhaust fumes the apartments and public walkways near to driveways and parking areas, and those driveways and parking areas.

**Occupational Exposures:**

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, the Violator 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 the Violator permits to smoke tobacco products at the Facilities, and (2) diesel and gasoline exhaust fumes produced by the operation of motor vehicles which the Violator permits at the Facilities. The source of exposure includes tobacco and tobacco smoke at the locations in Exhibit A. Employees include and are not limited to security personnel, maintenance workers, service personnel and administrative personnel. The areas at the Facilities where employees are being exposed to 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 the Facilities where employees are being exposed to diesel and gasoline exhaust fumes are 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 the 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, the Violator 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 the Violator sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to the Violator 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 the Violator of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to the Violator, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary".

Dated: April 30, 2004

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

**EXHIBIT A****AF EVANS COMPANY, INC.  
EVANS PROPERTY MANAGEMENT, INC.**

MORH Housing 741 Filbert Street Oakland, CA 94607  126 Units	Byron Park 1700 Tice Valley Blvd. Walnut Creek, CA 94595  187 Units
Lion Villas 2550 S. King Road San Jose, CA 95122  272 Units	The Promenade 5300 Case Avenue Pleasanton, CA 94566  146 Units
Miraido Village 566 N. 6th Street San Jose, CA 95112  109 Units	Piedmont Apartments 215 West MacArthur Blvd. Oakland, CA 94611  250 Units
Ocean Beach Apartments 740 La Playa Street San Francisco, CA 94121  85 Units	Mission Wells 39115 Guardino Drive Fremont, CA 94538  392 Units
Northridge Park 1667 Madrid Street Salinas, CA 93906  232 Units	Playa del Alameda 148 Crolls Garden Court Alameda, CA 94501  40 Units
Woodpark Apartments 22702 Pacific Park Drive Aliso Viejo, CA 92656  128 Units	Oceanview 813 Delaware Berkley, CA 94710  62 Units
Westwood Apartments 4900 Marconi Ave. Carmichael, CA 95608  182 Units	Park Vista 1301 Stevenson Blvd. Fremont, CA 94538  60 Units
Bigby Villa 1329 E. Florence Avenue Fresno, CA 93706  180 Units	Westgate Gardens 846 E. Belgravia Fresno, CA 93706  100 Units

<p>Windscape Apartments 9730 Reseda Blvd. Los Angeles, CA 91324</p> <p>45 Units</p>	<p>Arroyo Vista Apartments 26196 Crown Valley Parkway Mission Viejo, CA 92692</p> <p>156 Units</p>
<p>Briarwood Manor 9656 Exeter Avenue Montclair, CA 91763</p> <p>100 Units</p>	<p>Charter Oaks 3025 Browns Valley Road Napa, CA 94558</p> <p>75 Units</p>
<p>Hotel Oakland 270 13<sup>th</sup> Street Oakland, CA 94612</p> <p>315 Units</p>	<p>The Greenery 505 W. Cross Street Woodland, CA 95695</p> <p>95 Units</p>
<p>Oak Center Apartments 1601 Market Street Oakland, CA</p> <p>77 Units</p>	<p>Monterey Pines 680 S. 37<sup>th</sup> Street Richmond, CA 94804</p> <p>324 Units</p>
<p>Cascade Apartments 7600 Fruitridge Road Sacramento, CA 95820</p> <p>74 Units</p>	<p>Azure Park 5545 Sky Parkway Sacramento, CA 95820</p> <p>218 Units</p>
<p>Evergreen Estates 1048 Dixianne Ave. Sacramento, CA 95823</p> <p>55 Units</p>	<p>Victory Townhomes 1048 Dixianne Ave. Sacramento, CA 95823</p> <p>21 Units</p>
<p>Glen Ellen Estates 2380-2398 Glen Ellen Circle Sacramento, CA 95822</p> <p>35 Units</p>	<p>Los Robles Apartments 5500 Sky Parkway Sacramento, CA 95823</p> <p>80 Units</p>
<p>Norwood Estates 3335 Norwood Ave. Sacramento, CA 95838</p> <p>44 Units</p>	<p>Foothill Plaza 5324 Hemlock Street Sacramento, CA 95841</p> <p>98 Units</p>
<p>Greenway Village 6311 Sampson Ave. Sacramento, CA 95824</p> <p>54 Units</p>	<p>Norwood Annex 3301 Norwood Ave. Sacramento, CA 95838</p> <p>15 Units</p>

<b>River Garden Estates</b> 2201 Northview Drive Sacramento, CA 95833  124 Units	<b>The Plaza</b> 560 North F Street San Bernardino, CA 92410  161 Units
<b>Lassen Apartments</b> 441 Ellis Street San Francisco, CA 94102  81 Units	<b>Sommerhill Townhomes</b> 30 Novato Street San Rafael, CA 94901  39 Units

## 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 May 3, 2004.

# LIST OF CARCINOGENS AND REPRODUCTIVE TOXINS

<b>CARCINOGENS IN TOBACCO SMOKE:</b>	
Acetaldehyde	Acetamide
Acrylonitrile	4-Aminobiphenyl
(4-Aminodiphenyl)	Aniline
Ortho-Anisidine	Arsenic (inorganic arsenic compounds)
Benz[a]anthracene	Benzene
Benzo[b]fluoranthene	Benzo[j]fluoranthene
Benzo[k]fluoranthene	Cadmium
Captan	Chromium (hexavalent compounds)
Chrysene	Dichlorodiphenyltrichloroethane (DDT)
Bibenz[a,h]anthracene	7H-Dibenzo[c,g]carbazole
Dibenzo[a,e]pyrene	Dibenzo[a,h]pyrene
Dibenzo[a,i]pyrene	Dibenzo[a,l]pyrene
1,1-Dimethylhydrazine (UDMH)	Formaldehyde (gas)
Hydrazine	Lead and lead compounds
1-Naphthylamine	2-Naphthylamine
Nickel and certain nickel compounds	2-Nitropropane
N-Nitrosodi-n-butylamine	N-Nitrosodiethanolamine
N-Nitrosodiethylamine	N-Nitrosomethylethylamine
N-Nitrosomorpholine	N-Nitrosornicotine
N-Nitrosopiperidine	N-Nitrosopyrrolidine
Ortho-Toluidine	Tobacco Smoke
Urethane (Ethyl carbamate)	
<b>CARCINOGENS IN DIESEL AND GASOLINE EXHAUST FUMES:</b>	
Benzene	Unleaded Gasoline (wholly vaporized)
<b>REPRODUCTIVE TOXINS IN TOBACCO SMOKE:</b>	
Arsenic (inorganic Oxides)	Cadmium
Carbon disulfide	Carbon monoxide
Lead	Nicotine
Toluene	Tobacco Smoke
Urethane	
<b>REPRODUCTIVE TOXINS IN DIESEL AND GASOLINE FUMES:</b>	
Benzene	Unleaded Gasoline (wholly vaporized)

**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: May 5, 2004  
Place of Mailing: Irvine, California

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

AF Evans Company, Inc. Evans Property Management, Inc. 1000 Broadway, Ste. 450 Oakland, CA 94607  Attention: Arthur Evans	California Attorney General (Proposition 65 Enforcement Division) P.O. Box 944255 Sacramento, CA 94244-2550
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Los Angeles City Attorney  
200 N. Main St. N.E.  
Los Angeles, CA 90012

Los Angeles County DA  
210 W. Temple Street, 18th Floor  
Los Angeles, CA 90012

San Mateo District Attorney  
1050 Mission Road  
South San Francisco, CA 94080

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

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

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

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

Contra Costa County DA  
727 Court Street  
Martinez, CA 94553

Yolo County D A  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

District Attorney  
1430 Freedom Blvd.  
Watsonville, CA 95076

Napa County DA  
931 Parkway Mall  
Napa, CA 94559

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

Alameda County DA  
1225 Fallon Street  
Oakland, CA 94612

San Bernardino County DA  
316 N. Mountain View Av.  
San Bernardino, CA 92415

Sacramento County DA  
P.O. Box 749  
Sacramento, CA 95812

Fresno County DA  
2220 Tulare Street, 1000  
Fresno, CA 93721

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

Monterey County DA  
240 Church Street, #101  
Salinas, CA 93901

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

Dated: May 5, 2004

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