

# GRAHAM & MARTIN, LLP

ATTORNEYS AT LAW

3 PARK PLAZA, SUITE 2030  
IRVINE, CALIFORNIA 92614

TELEPHONE (949) 474-1022  
FACSIMILE (949) 474-1217

May 28, 2004

**PROPOSITION 65**  
**AMENDED 60-DAY NOTICE OF INTENT TO SUE SSR REALTY ADVISORS, INC.**  
**AND METRIC PROPERTY MANAGEMENT, INC. PURSUANT TO HEALTH &**  
**SAFETY CODE SECTION 25249.6**

This legal notice constitutes notification that SSR Realty Realty Advisors, Inc. and Metric Property Management, Inc. (hereinafter referred to as the "Violator") have 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). With this letter, 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 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 (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 November 16, 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 May 28, 2000 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 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.

---

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

**C. Product Exposures**

While in the course of doing business from May 28, 2000 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, such unlawful exposures occur in the following ways at the Violator's Properties identified.

**A. Violations Associated With Tenant Activity**

Certain apartment-related activities which result in exposures to tenants and their guests and visitors, and Violator's business invitees, contractors and employees to Designated Chemicals are due to tenant's individual conduct, that are known to Violator and thus could be prohibited. The Violator has chosen, as a matter of business practice, to not prohibit such activities. Therefore, such exposures, made without first providing a clear and reasonable warning, constitute violations of Proposition 65. The exposures are as follows

:

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

**Short description:** Tobacco smoke and its by-products contain many chemicals that may be harmful if inhaled. Apartment properties include personal residences at which individual tenant conduct cannot be controlled. Smoking is generally allowed in outdoor common areas and other areas designated by the property manager including designated rooms.

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

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

Location of the source of exposure: Apartments, common areas and various designated areas around the property where smoking is 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 the use of certain products and materials when used as intended as combustibles generate Designated Chemicals to which tenants 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 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).

3. Use of Hobby-Related Products and Materials by Tenants

Short description: The Violator permits the use of certain Products and materials used by tenants in pursuit of personal hobby interests which expose tenants and other persons to Designated Chemicals as set forth below.

Route(s) of exposure: Environmental and consumer exposures through inhalation of gaseous, vaporous or aerosol emissions and in some cases skin absorption and ingestion through hand-to-mouth contact with hobby-use products and materials that contain or emit Designated Chemicals.

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 occupied by a tenant engaged in certain hobbies.

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

- Arts and craft hobbies including painting, ceramics and sculpture cause exposure to Designated Chemicals. Ceramic glazes and clays made by Aardvark, Resco, American Art Clay and others contain crystalline silica (cancer). Ceramic glazes and paints made by Art Clay, Duncan Enterprises, Mayco, Gare and Laguna Clay and others, depending on color, contain lead and lead compounds (cancer and developmental toxicity and other reproductive harm), cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm), cobalt metal and cobalt oxide (cancer). Crayons contain asbestos (cancer) and ceramic fibers (cancer). Oil and solvent-based aerosol and non-aerosol paints, thinners and marking pens contain toluene (developmental toxicity) and benzene (cancer, developmental toxicity and other reproductive harm). 3M Spray Adhesive contains toluene (birth defects). Acrylic paint made by Utrecht Manufacturing, Winsor and Newton, Binney & Smith, Golden Artist Colors, Creative Art Products and others contain cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and lead compounds (cancer, developmental toxicity and other reproductive harm). Bronze and brass contain lead (cancer, developmental toxicity and other reproductive harm).

- Glass blowing, tiffany lamp making and related glass-based arts and crafts cause exposure to combustion products of natural gas including carbon monoxide (developmental toxicity), formaldehyde (cancer), soots and tars (cancer), benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity) and radon (cancer) based on PG&E published warnings. Leaded metal, solder and leaded glass and metallic colored pigments contain lead (cancer, birth defects and other reproductive harm). Colored metallic pigments contained or used in stained glass crafting also contain cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm), and cobalt and cobalt oxide (cancer).
- Automotive maintenance and parts cleaning involve use of solvents, cleaning products and touch-up paints, which contain volatile chemicals to which persons nearby can inhale, and exposures to gasoline and diesel fuel vapors and gasoline and diesel engine exhausts. Gasoline and diesel vehicle fuels contain benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity) and other designated chemicals (cancer and developmental toxicity and other reproductive harm). Gasoline and diesel engines emit gasoline engine exhaust (condensates/extracts) and diesel engine exhaust (cancer). Solvents like Bowman Safety Solvent, Champion, ZEP products, National Auto Body Supply, Gunk, Chief Autoparts and others used in vehicle maintenance including carburetor, brake and parts cleaners contain methylene chloride (cancer), tetrachloroethylene (cancer) and benzene (cancer, developmental toxicity and other reproductive harm). Paint strippers made by KleenStrip, Jasco, Bix and other companies contain methyl chloride (cancer) and toluene (developmental toxicity). Brake and clutch surfaces contain asbestos (cancer). Batteries (all brands) contain lead (cancer and developmental toxicity and other reproductive harm).
- Personal grooming hobbies including manicures involve use of nail polish, other nail care products and nail polish remover which contain toluene (developmental toxicity) and formaldehyde (cancer).

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

**4. Apartment Properties Construction Materials**

**Short description:** Apartment construction materials contain Designated Chemicals and their presence results in knowing an intentional exposure to persons as defined in Proposition 65. Due to the fact that apartments in the state range in age from relatively new to many decades old, there is a wide variety of construction materials that have been used over the years and a similar variety of Designated Chemicals in each type of construction material depending on the date of manufacture and the regulations in effect at that time. Each of the Facilities expose persons to some of the

materials described below and some of the Facilities expose persons to all of the materials described below.

Route(s) of exposure: Environmental and occupational exposures to construction materials 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 Apartment Properties 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:

- Roofing materials of various types contain designated chemicals which when deteriorated or undergoing repair/replacement result in emissions of such chemicals to which the persons are exposed. (1) Built-up roofs contain asbestos (cancer) or fiberglass (ceramic fibers-cancer) felting and insulation that can be released through deterioration and/or cutting/disturbing; built-up 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). (2) Shingles contain the same chemicals as contained in built-up roofing set forth above and referenced herein, except they are pre-manufactured and installed as a construction product. Exposures would result mainly from generation of particulate or dust containing Designated Chemicals. Shingles manufactured by Owens-Corning and GAF contain the Designated Chemicals listed in (1) above and incorporated herein by reference. (3) Membrane roofing systems are comprised of the membrane, usually 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). (4) Wood Shake roofing systems utilize an underlying felting and/or membrane as insulation and a moisture barrier. Such materials include asbestos (cancer) and coal tar or petroleum asphalt which contains the Designated Chemicals listed in (1) above and incorporated by reference herein:

- Portable water conveyance and dispensing systems utilize metallic components including lead which leach into the water being consumed by person at Apartment Properties. Such construction materials and water conveyance and dispensing devices which contain and release lead (cancer, developmental toxicity and other reproductive harm) into drinking water include, but are not limited to: steel water pipes, water meters, solder used with copper plumbing, brass fittings, brass faucets, water purification devices and drinking fountains.
- Insulation used in apartments results in exposure of persons to Designated Chemicals due to emissions during normal degradation or deterioration of such insulation or when it is disturbed during repairs, maintenance or renovations. Insulation systems include but are not limited to the following: (1) Asbestos-containing insulation contains asbestos (cancer) and can be found in pre-1980 structures as thermal insulation on pipes, ducts, other equipment and structural applications. (2) Urea-formaldehyde rigid and flexible foam insulation installed or cured-in-place in wall systems contains and emits formaldehyde gas (cancer). (3) Fiberglass insulation which contains ceramic fibers (cancer).
- Structural construction materials used in walls, floors, ceilings and outside cladding contain Designated Chemicals 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 are made from poly vinyl chloride (PVC) which contains vinyl chloride monomer (cancer), diethylhexyl phthalate (cancer), and depending on color 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 contains 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).

- Paints, coatings and associated solvents, additives and texturizers 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 cause exposures to Designated Chemicals. Historical use and presence of interior and exterior paint containing lead (cancer, developmental toxicity and other reproductive harm). Currently used paints, stains and coatings include but are not limited to: Rustoleum Hard Hat Aerosol Primers and Top Coats which contain toluene (developmental toxicity), Rustoleum Enamels which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Rustoleum Painters Touch paint which contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Hammerite Rust Cap Aerosol and Paint which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Glidden Oil/Alkyd Gloss Interior/Exterior Paint which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Ralph Lauren Paints which contains crystalline silica (cancer); Behr Enamel Paints and Water-Based Primer which contains benzene (cancer, developmental toxicity and other reproductive harm); Thompson's Water Seal X-tra which contains benzene (cancer, developmental toxicity and other reproductive harm); Homax Paint Texturizer which contains crystalline silica (cancer); Miniwax Wood Stains which contain benzene (cancer, developmental toxicity and other reproductive harm) and Miniwax Wood Finish Aerosols which contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Deft Woodfinishers which contain benzene (cancer, developmental toxicity and other reproductive harm); Flecto Varathane Aerosol which contains benzene (cancer, developmental toxicity and other reproductive harm); Parks ProFinish Polyurethane Coatings which contain benzene (cancer, developmental toxicity and other reproductive harm); Mohawk Lacquer Gloss and Satin Paints which contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity).

- Furnished apartment and common area furnishings 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. Apartment Properties' furnishings include furniture, furnishings and window treatments in furnished apartments, common areas, and administrative offices. Carpeting and furniture constructions materials include foams, metals, treated wood, 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). Metal fixtures and furniture hardware including brass and zinc, chrome, or nickel-plated metal contain lead (cancer, developmental toxicity and other reproductive harm), cadmium (cancer), hexavalent chromium compounds (cancer) and nickel and certain nickel compounds (cancer). Plastic and rubber components of furniture and fixtures contain: 1,3 butadiene (cancer), Di(2-ethylhexyl) phthalate (cancer), vinyl chloride (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm), cadmium (cancer), and hexavalent chromium compounds (cancer). Window treatments, including window blinds and painted trim that contains lead and lead compounds (cancer, developmental toxicity and other reproductive harm). Plastic flooring, tiles and rubber floor coverings/typical alternatives to linoleum made of poly vinyl chloride contain vinyl chloride monomer (cancer), diethyl hexyl phthalate (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm), cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and cobalt and cobalt oxide (cancer). Adhesives used to install furnishings contain Designated Chemicals including but not limited to the following: 3M Fast Bond 30-NF Neutral Contact Adhesive which contains toluene (developmental toxicity); Mohawk Spray Adhesive which contains benzene (cancer, developmental toxicity and other reproductive harm); Mohawk Casein Urea Resin Glue which contains formaldehyde (cancer); Midway Sales and other Rubber Cements which contain toluene (developmental toxicity).

- Electrical wiring and lighting fixtures in apartments and common areas result in exposures to Designated Chemical emissions from polyvinyl chloride (PVC) insulated wiring, employee and contractor exposures due to handling such insulated wire which contains vinyl chloride monomer (cancer), diethyl ethylphthalate (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm), cobalt and cobalt oxide (cancer) and cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm). Electrical lighting devices including light bulbs, terminals, light sockets, fluorescent tubes and terminals, lamps, decorative lamps like tiffany lamps with lead glass shades and other electrical devices contain lead (cancer, developmental toxicity and other reproductive harm) which results in exposure by ingestion after touching such devices. Fluorescent tubes contain mercury and mercury compounds (developmental toxicity) and cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and if broken can cause an exposure to these Designated Chemicals through inhalation and/or ingestion.

- Hardware installed at or in apartments and in Apartment Property common areas contain Designated Chemicals and an ingestion exposure

can occur through their handling as described in the following representative examples: Brass keys, door knockers, door knobs and other entry way hardware, as well as decorative railings, fixtures, faucets, doors and furniture handles contain lead (cancer, developmental toxicity and other reproductive harm). Fencing components include galvanized steel hardware and fencing which contains lead (cancer, developmental toxicity and other reproductive harm). Fencing and other barrier hardware including safety railings and gates may be coated with colored polyvinyl chloride (PVC) which contains vinyl chloride monomer (cancer), diethyl hexyl phthalate (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm) cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and cobalt and cobalt oxide (cancer).

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

Providing heating and hot water, parking facilities and transportation services 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: Except for Apartment Properties in which all utility services are electrical, providing heating and hot water entails 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. Violators are aware that such activities cause exposures to Designated Chemicals, through information provided by natural gas and other fuel vendors.

Route(s) of exposure: In most cases, exposure will be through inhalation. In addition, occupational and environmental exposures will be experienced by persons touching surfaces contaminated with materials containing Designated Chemicals, for example fuel oil or soot.

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 Apartment Properties.

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

Liquified 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, substructure or subterranean parking, and designated bus and other public transportation and commercial vehicle loading/unloading 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 at or around designated vehicle pick-up or loading/unloading points like bus stops, loading docks and in the general environment and in some cases in apartments near such areas. 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 (cancer).

7. Emergency Generators

Short description: The Violator owns and operates emergency generators to power essential activities in the event of an interruption in utility-provided electricity. Periodically operating such generators for maintenance and testing and in the event of a power outage results in exposure to diesel and/or gasoline engine exhaust and fuel vapors.

Route(s) of exposure: Persons are exposed to engine exhausts and fuels primarily via inhalation.

Locations of exposure and person(s) exposed: Exposures to engine exhausts from emergency generators occur on Apartment Properties in common area locations at and around such emergency generators although the extent of the exposure location varies with local conditions and time of operation during testing, maintenance and emergency use. 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 emergency generator engines emit diesel engine exhaust (cancer). Gasoline emergency generator engines emit gasoline engine exhaust (cancer). Diesel fuel and gasoline contain benzene (cancer, developmental toxicity and reproductive harm) and toluene (developmental toxicity).

8. Tenant, Employee and Business Invitees Transportation Services  
Short description: Many Apartment Properties provide transportation services to tenants, business invitees, contractors and employees. Such transportation services involve operation of vans, limousines, automobiles, trucks and buses which are either gasoline and diesel engine-powered, which results in engine exhaust and fuel exposure. In addition, persons may be exposed to second-hand tobacco smoke within such vehicles.  
Routes of exposure and person(s) exposed: Exposures to designated chemicals contained in engine exhaust, fuels and tobacco smoke generally occurs via inhalation especially when vehicles are idling and picking-up or dropping off passengers and when vehicles are being refueled by employees. Persons exposed 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 (cancer). Diesel fuel and gasoline contain benzene (cancer, developmental toxicity and reproductive harm) and toluene (developmental toxicity). Second-hand exposure to smoking contains tobacco smoke (cancer), carbon monoxide (developmental toxicity), and other chemicals (cancer, developmental toxicity and other reproductive harm).

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

9. In-Apartment Cleaning and Maintenance  
Short description: Apartment Properties provide a range of cleaning and maintenance services with respect to individual apartment units. In some cases, the Violator provides routine periodic cleaning and maintenance services to its tenants. In others, the Violator may only provide cleaning and maintenance services upon lease renewal or upon leasing by a new tenant. In either case, 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 the 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:

- Adhesives including but not limited to DAP, Inc. Contact cement which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity), MACCO Adhesive Liquid Nails products which contain benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity), and styrene oxide (cancer), Molsenbacker's Lift-Off No. 2 Aerosol Adhesive which contain tetrachloroethylene (cancer), benzene (cancer, developmental toxicity and other reproductive harm), 3M Fast Bond 30-NF Neutral Contact Adhesive which contains toluene (developmental toxicity); Mohawk Spray Adhesive which contains benzene (cancer, developmental toxicity and other reproductive harm); Mohawk Casein Urea Resin Glue which contains formaldehyde (cancer); Midway Sales, 3-M, GAF, DAP and other rubber cements which contain toluene (developmental toxicity).
- Specialty Cleaning Products like carpet and floor cleaners, Paint Strippers and Graffiti Removers, including but not limited to: ZEP Carpet Steam Cleaner 1291 which contains nitroacetic acid (cancer), ZEP Aerosol Wax Stripper which contains ethylene oxide (cancer and reproductive harm); Johnson Diversey, Inc. UHS Floor Cleaner, J-Spray Cleaner and Odor Neutralizer, Horizon 420 Neutral Cleaner, Power-Foam Bravo, ProStrip and Bravo Extra contain ethylene oxide (cancer and reproductive harm); Guardsman Products Goof-Off Cleaner contains benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity); Contact Industries, Contact Vandal and Graffiti Remover contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity), and ethylene glycol monomethyl ether (developmental toxicity and other reproductive harm); Locktile Naval Jelly which contains, according to its manufacturer, an undisclosed chemical which causes cancer (cancer); Molsenbocker's Lift-Off No. 3 Pen, Ink and Marker Graffiti Remover which contains benzene (cancer, developmental toxicity and other reproductive harm); Molsenbocker's Grease, oily stain and tape remover which contains tetrachloroethylene (cancer), benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); ZEP products and ZEP-O-Brite Abrasive Cleaner 1038 which contains crystalline silica (cancer); Claire Manufacturing Stainless Steel Cleaner which contains N-methyl pyrrolidone (developmental toxicity); Vandalism Spray which contains dichloromethane (cancer), tetrachloroethylene (cancer) and toluene (developmental toxicity) and Spot Remover/Aerosol Spot Remover which contains tetrachloroethylene (cancer); Lincoln Leather Cleaner and Spot Remover which contains tetrachloroethylene (cancer); Kleenstrip Graffiti

Remover Aerosol which contains dichloromethane (cancer); JASCO and BIX Graffiti Remover (non-aerosol) which contain dichloromethane (cancer) and toluene (developmental toxicity); Behr Enamel Paints and Water-Based Primer which contains benzene (cancer, developmental toxicity and other reproductive harm); Thompson's Water Seal X-tra which contain benzene (cancer, developmental toxicity and other reproductive harm); Homax Paint Texturizer which contains crystalline silica (cancer); Miniwax Wood Stains which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Deft Woodfinishers which contain benzene (cancer, developmental toxicity and other reproductive harm); Flecto Varathane Aerosol which contain benzene (cancer, developmental toxicity and other reproductive harm); Parks ProFinish Polyurethane Coatings which contain benzene (cancer, developmental toxicity and other reproductive harm); Mohawk Lacquer Gloss and Satin Paints which contain benzene (cancer, developmental toxicity and other reproductive harm).

- Pesticides including but not limited to: 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).

- General Purpose Cleaning and Sanitizing Products including, but not limited, to: Proctor and Gamble Professional Comet Cleaner and Muriatic Acid, Johnson Diversey, Inc. Crew Bathroom Cleaners and Disinfectants (approximately 20 different products similarly formulated), Johnson Diversey, Inc. Endback Disinfectant Cleaner, ENVOY Foaming Disinfectant Cleaner, Spitfire Power Cleaner, ZEP Disinfectant-Deodorizer, and ZEP Chlorinated General Purpose Cleaner contain chlorine and chlorine compounds which create and emit in the presence of methane and other organic materials in soiled surfaces, chloroform

(cancer); Johnson Diversey, Inc. Brite Stainless Steel Cleaner which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Johnson Diversey Expose II Cleaner Disinfectant Deodorant which contains o-phenyl phenol (cancer); ZEP General Purpose Aerosol Cleaner/Degreaser which contains benzene (cancer, developmental toxicity and other reproductive harm); ZEP Cold Cleaning Solvent which contains methylene chloride (cancer), benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); ZEP Heavy Duty Cleaner and Degreaser which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); ZEP Abrasive Cleaner which contains crystalline silica (cancer); Johnson Diversey Cong-R-Dust which contains benzene (cancer, developmental toxicity and other reproductive harm); Chemresearch New Improved Good Riddance Cleaner which contains ethylene oxide (cancer and reproductive toxicity), 1,4 dioxane (cancer), butylated hydroxyanisole (cancer) and DEOX Cleaner which contains ethylene oxide (cancer and reproductive toxicity), lead (cancer, developmental toxicity and other reproductive toxicity) and inorganic arsenic compounds (cancer); ZEP Quick Cleaner 1461 and MVP 0927 Cleaner which contains ethylene oxide (cancer and reproductive toxicity); Bowman Aerosol Safety Solvent which contains tetrachlorethylene (cancer); DOW Chloroethene XL Solvent which contains nitromethane (cancer); Soco-Lynch Solvent Stripper and Cleaner which contains benzene (cancer, developmental toxicity and other reproductive harm), dichloromethane (cancer) and toluene (developmental toxicity); Greenstreet Floral Care and Cleaner which contains methylene chloride (cancer); and Slide Products Cleaner and Degreaser which contains trichloroethylene (cancer), ZEP Aerosol Furniture Cleaner and Polish which contains benzene (cancer, developmental toxicity and other reproductive harm).

- Polishes including but not limited to: Sheila Shine Aerosol Polish which contains tetrachloroethylene (cancer); Smart and Final Cleaner and Polish which contains tetrachloroethylene (cancer); Mohawk Cleaners and Polishers which contain toluene (developmental toxicity) and lemon oil polish and Buffing Paste, Buff-it Black and Tan and Rubbing Compounds contain benzene (cancer, developmental toxicity and other reproductive harm).

- Other Cleaning and Janitorial Activities 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).

- Maintenance Materials including but not limited to lubricants including: WD-40, Gunk Liquid Wrench, Super Penetrant (liquid and aerosol), Gunk Liquid Wrench Super Lubricant, 3 in 1 Oil contain benzene (cancer,

developmental toxicity and other reproductive harm) and toluene (developmental toxicity); and Contact Industries Contact Silicone – Quick Slip Aerosol which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity). Other maintenance materials containing Designated Chemicals include: DAP Durabond Webpatch which contains crystalline silica (cancer); and Sealmaster Pipe Joint Compound which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity).

- Paints and Coatings including but not limited to: PDG Acrylic Latex Paint, Speedhide Flat White Base, Pittcryl Exterior Latex Flat White, Speedcraft Flat white/pastel and Ralph Lauren Paints which contains crystalline silica (cancer); Sherwyn Williams Krylon Industrial Maintenance and Touchup Spray Colors and 6971 Mil-S Appliance Touch-up Paint which contain benzene (cancer, developmental toxicity and other reproductive harm); Masterchem Industries Kilz Alkyl Resin Primer which contain benzene (cancer, developmental toxicity and other reproductive harm).

- Hand Tools, Hardware and Brass Keys 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). Manufacturers of such tools include but are not limited to Alltrade, APW Tools, Bond, KR Tools, Rubbermaid, Michigan Tools, Stanley and Test-Rite.

**E. Exterior and Common Area Apartment Maintenance**

10. Apartment Properties maintain the exteriors of structures and common areas including landscaping as a benefit for tenants, and for business purposes. In some cases, Violator’s employees perform such maintenance. In other cases, contractors perform such work which places control over selection and use in the contractor’s hands which may cause exposures to a variety of materials and Designated Chemicals. Due to Violator’s contractual control, it could screen such chemical use and exposures which occur to provide warnings or alternatively prohibit use of products or materials containing Designated Chemicals. Violator, based on a practical consideration, has not exercised such diligence and is deemed to have known or should have known about the exposure to designated chemicals in the following situations.

Short description: Exterior building, common areas and landscape maintenance cause emissions from or the presence of various products, materials and activities which contain Designated Chemicals to which persons are being and have been exposed without receiving prior to such exposure a clear and reasonable warning. Such exposures result from exterior building maintenance, landscape maintenance including the application of pesticides and fertilizers and the operation of internal combustion engine powered equipment, and other maintenance activities.

Routes of exposure: Environmental exposures through inhalation of gases, vapors and aerosols emitted from the subject maintenance activities and via skin contact and/or ingestion due to the presence of Designated Chemicals on surfaces and other locations with which persons, in particular children may come into contact through touching such surfaces and then be exposed to Designated Chemicals through ingestion.

Location or description of person(s) exposed: Tenants and their guests and visitors and Violator's business invitees, contractors and employees are exposed when they are present during and after such maintenance activities around the Violator's Apartment Property.

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

- Exterior apartment structural maintenance results in exposures to Apartment Properties Construction Materials as set forth in Paragraph 4 and incorporated herein by reference including but not limited to roofing materials, insulation, structural construction materials and paints/coatings which contain Designated Chemicals which are emitted or present as described in Paragraph 4. In addition, products commonly used by the Violator to repair roofing and pavement manufactured by the Henry Company including Crack Filler, Driveway Resurfacer, Crack repair, Wet Patch Roof Cement, Cold Asphalt Roof Cement, Asphalt Roof Tap Cement, Elastomeric Roof Cement, and Aluminum Roof Coating.
- 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).
- Painting and painted or finished surface maintenance including the paints, finishers and other surface maintenance materials that contain designated materials set forth in Paragraph 4 and incorporated herein by reference.

- 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. 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). Manufacturers of such fertilizers include but are not limited to J.R. Simplot, Loncala, Ashland, IMC-Apico, Freeport-McMoran, H.J. Baker, Cebrex, Jim Hicks, Actagro, Cero-Power, Gro More, John Pryor, John Taylor, Bandini, Wilbur-Ellis, Ironite, Lilly, Conagra and Stern's Miracle-Gro.
- Pesticides used in landscaping and plant care and insect/rodent control including but not limited to those pesticides set forth in Paragraph 9 and incorporated herein by reference.
- 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).

**F. Exposures to Designated Chemicals Associated with Apartment Property Amenities**

11. Apartment Property amenities include swimming pools, hot tubs, exercise facilities, arts and crafts, clubhouse or common area restrooms, clubhouse or common area fireplaces and food services.
- Short description:** Many Apartment Properties provide amenities to tenants which may give rise to exposures to Designated Chemicals for which warnings have not been provided as required. The Designated Chemicals associated with such amenities are set forth in the following:
- Route of exposure:** Environmental exposures occur through inhalation of gaseous, vapors or aerosol emissions of Designated Chemicals, as well as skin contact and subsequent ingestion of Designated Chemicals and ingestion of Designated Chemicals associated with food services.
- Location of exposure and person(s) exposed:** Exposures to Designated Chemicals occur during use and maintenance of amenities at Apartment Properties. 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:**

- Swimming pools, Jacuzzis and hot tubs located on apartment properties use disinfectants containing chlorine and bromine, which react with waterborne organic compounds, like methane, to form carcinogen compounds including: Chloroform (cancer), bromoform (cancer) and bromodichloro methane (cancer) formed during disinfection of water. All commercial pool/hot tube disinfection systems utilize chlorine and/or bromine chemistry to react with organic contaminants. Apartment operators typically use commercial product lines like Ecolab, HASA, Nalco, Taylor Technologies, All Pure, All Chem, Applied Bio Chemists, Aqua Clear, Olin, Leisure Time, Alliance, Sierra Chemical and others with similar chemistry. Pools and spas also use filtering systems with diatomaceous earth with contains crystalline silica (cancer). Certain clarifier chemicals and biocides are based on amine chemistry including but not limited to Applied Biochemists products containing ethylene oxide (cancer and reproductive harm).
- Food and Beverage Service or granting permission to use food service facilities in Apartment Property common areas which can cause exposures to Designated Chemicals through foods, water and beverages, as well as the glassware and tableware on which the food is served, and the food service environmental contain chemicals which require a warning. Food ingredients, including but not limited to meat, fish and produce may contain detectable levels of designated chemicals. Meats contain anabolic steroids (reproductive toxicity), testosterone and its esters (cancer), streptomycin sulfate (developmental toxicity), and other chemicals (cancer and developmental toxicity and other reproductive harm). Fish especially canned tuna fish and shellfish contain mercury and its compounds (developmental toxicity), methyl mercury (developmental toxicity), methyl mercury compounds (cancer), DDT and its isomers (cancer, developmental toxicity and other reproductive harm), and poly-chlorinated biphenyls (cancer and developmental toxicity) and other chemicals (cancer and developmental toxicity and other reproductive harm). Produce contains chloroform (cancer) due to processing water that contained chlorine disinfectant and pesticide and fertilizer residues that contain designated chemicals (cancer and developmental toxicity and other reproductive harm). Certain grains, cereals, nuts and peanut butter contain aflatoxins (cancer) as a naturally-occurring fungal toxin. Prepared foods, in particular, pan fried, broiled and grilled meats and fish contain benzo(a)pyrene (cancer) and other related polycyclic aromatic organic compounds (cancer). Fried food, in particular french fried potatoes, contains acrylamide (cancer). Certain processed foods including cereals and baked goods, and potato chips and other snack foods contain acrylamide (cancer).
- Kitchen cleaning and sanitation: Cleaning products used in kitchens are generally the same as those used in apartment cleaning by the Violator as described in Paragraph 9 that is incorporated herein by this reference which lists such cleaning and sanitizing products and the Designated

Chemicals to which persons in and around kitchens are exposed. In addition, dishwashing detergents made by Proctor and Gamble, Shaklee Corp., Benckiser Consumer Products, Unilever and others contain arsenic compounds including arsenic oxide (cancer and developmental toxicity) and lead (cancer and developmental toxicity and other reproductive harm).

- Alcoholic beverage consumption through providing and serving such beverages or permitting tenants and other persons using common areas to serve alcoholic beverages causes an exposure through ingestion consumption to ethyl alcohol in alcoholic beverages (developmental toxicity).

- Use of fuels in kitchens and in food services causes exposures to Designated Chemicals as follows: Sterno cooking fuel manufactured by Candle Corporation of America, Colgate Palmolive, Western Family Foods, Ecolab and other makers contains ethyl alcohol and when ignited emit soots, tars and mineral oils (cancer), acetaldehyde (cancer), benzene (cancer, developmental toxicity and other reproductive harm), carbon monoxide (developmental toxicity), and formaldehyde (cancer). In addition, combustion of natural gas and compressed or liquefied fuel gases including CNG, LNG and LPG cause inhalation exposures to persons in and around kitchens to Designated Chemicals listed in Paragraph 5 and referenced herein.

- Exercise facilities provided by some Apartment Properties cause exposures to Designated Chemicals as follows: Tenants and other persons using exercise equipment are exposed by handling of exercise hand weights and metal/plastic/rubber grips on exercise equipment and then ingesting Designated Chemicals through hand to mouth contact. Such equipment is manufactured by Keys Fitness Products, York Barbell Company, Bollinger Industries, Cap Barbell and other makers and contains lead and lead compounds (cancer, developmental toxicity and other reproductive harm), and vinyl chloride (cancer).

GRAHAM & MARTIN LLP

Dated: May 28, 2004

## EXHIBIT A

### SSR Realty Advisors, Inc. and Metric Property Management, Inc.

Mirabella At Aviara  
6610 Ambrosia Lane  
Carlsbad, CA 92009

The Hills of Corona  
2635 Millcreek Place  
Corona, CA 91719

Estates at Park Place  
3400 Stevenson Blvd.  
Fremont, CA 94537

Renaissance Tower Apartments  
501 West Olympic Blvd.  
Los Angeles, CA 90015

Emerald Hills Apartments  
855 West El Repetto  
Monterey Park, CA 91754

Castle Rock Apartments  
5700 Lochmoor Drive  
Riverside, CA 92507

Allegro at Jack London Square  
240 3<sup>rd</sup> Street  
Oakland, CA 94607

Meridian  
1235 Town & Country Road  
Orange, CA 92868

Carmel Pointe  
3824 Elijah Court  
San Diego, CA 92130

Missions at Rio Vista  
2242 Gill Village Way  
San Diego, CA 92108

Versailles Apartments  
23100 Avenue San Luis  
Woodland Hills, CA 91364

Colonnade Apartments  
5880 Fair Isle Drive  
Riverside, CA 92507

<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 MERIT**  
**Health and Safety Code Section 25249.7(d)**

I, Anthony G. Graham, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am member of the State Bar of California, a partner of the law firm of Graham & Martin, LLP, and attorney for noticing parties Consumer Defense Group and The McKenzie Group.

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 exposures to the listed chemicals that are 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.

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 28, 2004.

\_\_\_\_\_

\_\_\_\_\_

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 550 chemicals have been listed as of May 1, 1996. 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 does 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" "no observable effect" test if an individual were exposed to such 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, 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 regulations (Title 22, California Code of Regulations, Section 129). 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 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.

§ 14000. Chemicals Required by State or Federal Law Have Been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to be adequately tested as required (Health and Safety Code 25249.5).

Readers should note a chemical that has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation.

The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the U.S. Environmental Protection Agency. The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the first 200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

For purposes of this section, "onc mouse" means oncogenicity in mice, "onc rat" means oncogenicity in rats, "repro" means reproduction, "tera rodent" means teratogenicity in rodents, "tera rabbit" means teratogenicity in rabbits.

Chemical	Testing Needed
Bendiocarb	onc rat, repro, tera rodent
Chloroneb	onc rat, onc mouse, repro, tera rodent, tera rabbit
PCP	repro, onc rat
Petroleum distillates, aromatic	onc rat, onc mouse, repro, tera rodent, tera rabbit

(c) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Toxic Substances.

Under Section 4(a) of the Toxic Substances Control Act, testing of a chemical is required when that chemical may present an unreasonable risk, or is produced in substantial quantities and enters the environment in substantial quantities, or may have significant or substantial human exposure.

For purposes of this section, "tera" means teratogenicity, "tox" means reproductive toxicity, "onc" means oncogenicity.

Chemical	Testing Needed
Alkyl (C12-13) glycidyl ether	tox, tera
t-Amyl methyl ether	tox, tera
Bisphenol A diglycidyl ether	onc, tox
Cyclohexane*	tox, tera
Glycidyl methacrylate*	tera
1,6-Hexamethylene diisocyanate	tox, tera
N-Methylpyrrolidone	onc, tox, tera
Phenol	tox

\* The Toxic Substances Control Act Section 4 health effects testing programs for cyclohexane and glycidyl methacrylate have been completed and the U.S. Environmental Protection Agency's review of the testing program data is currently underway.

(d) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Pesticide Programs

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires EPA to register pesticides based on data adequate to demonstrate that they will not result in unreasonable adverse effects to people or the environment when used in accordance with their EPA-approved labels.

In 1988, FIFRA was amended to strengthen EPA's pesticide regulatory authority and responsibilities to reregister pesticides registered prior to 1984 to ensure they meet today's stringent scientific and regulatory standards. Reregistration requires registrants to develop up-to-date data bases for each pesticide active ingredient. As part of the reregistration process, modifications may be made to registrations, labels or tolerances to ensure they are protective of human health and the environment. Also, reregistration reviews will identify any pesticides where regulatory action may be necessary to deal with unreasonable risks. EPA has been directed to accelerate the reregistration process so that the entire process is completed by 1997. The 1988 amendments set out a five-phase schedule to accomplish this task with deadlines applying to both pesticide registrants and the EPA. These amendments are requiring a substantial number of new studies to be conducted and old studies to be reformatted for EPA review to ensure they are adequate. EPA may, in the future, request additional data or information to further evaluate any concerns over the safety of pesticide products.

The chemicals listed below are those for which data are unavailable or inadequate to characterize oncogenicity, teratogenicity, or reproductive effects potential. For purposes of this section, "onc" means oncogenicity, "tera" means teratogenicity, and "repro" means reproductive toxicity.

Chemical	Data Requirements
Acrolein	onc, tera
Alkyl imidazolines	tera
Ametryn	repro, tera
4-Aminopyridine	onc, repro, tera
4-T-Amylphenol	onc, repro
Aquashade	onc, repro, tera
Bensulide	onc, repro, tera
Benzisothiazoline-3-one	onc, repro, tera
Brodifacoum	repro
Bromonitrostyrene	tera
Busan 77	repro
Chlorflorethol methyl	tera
Chlorophacinone	tera
Chloropicrin	onc, repro
Chromated arsenicals	tera
Cycloate	onc
Cypermethrin	onc, repro, tera
DCNA	repro, tera
Dibromodicyanobutane	tera
Diclofop-methyl	onc, tera
Dicrotophos	onc, repro
Dihalodialkylhydantoins	onc, repro, tera
Dimethipin	onc, repro, tera
Dimethyldithiocarbamate	onc, repro, tera
Dinocap and its compounds	tera
Diphacinone and salts	onc, repro, tera
Diphenylamine	onc, tera
Dipropyl isocinchomeronate	repro
Diuron	onc

Chemical

Dodine

Endothal and salts  
Ethofumesate  
Ethoxyquin

Fenthion  
Fenvalerate  
Fluvalinate

Hydroxy-methylthiocarbamate

Imazalil  
Inorganic chlorates  
Inorganic sulfites  
Iodine-potassium iodide  
Iprodione  
Irgasan

Lampicide

Magnesium phosphide  
Malathion  
Maneb  
MCPB and salts  
Melfluidide and salts  
Mepiquat chloride  
Metaldehyde  
Methoxychlor  
Methyl isothiocyanate  
Methyl parathion  
Methylthiocarbamate  
MGK 264  
Molinate

Naphthalene  
Naphthaleneacetic acid  
Naphthenate salts  
Napropamide  
Niclosamide  
Nicotine and derivatives  
Nirapyrin  
4-Nitrophenol

Ocethirimone  
Oil of Pennyroyal  
Omadine salts  
Oxadiazon  
Oxyfluorfen

Pebulate  
Perfluidone  
Phenmedipham  
Phenol and salts  
2-Phenylphenol and salts  
Pine oils  
Piperonyl butoxide  
Poly (hexamethylene biguanide)  
Polyethoxylated aliphatic alcohols  
Prometon  
Propachlor

Data Requirements

onc, tera

onc, repro, tera

onc

tera

tera

onc, repro, tera

repro, tera

tera

onc

onc, repro, tera

onc, repro, tera

tera

tera

onc, repro, tera

onc, repro

onc

onc

onc, tera

tera

tera

onc, tera

onc, repro, tera

tera

tera

repro

tera

repro

onc

onc, repro

tera

repro

onc, tera

onc, tera

onc, tera

onc, repro, tera

tera

tera

onc, repro, tera

repro

onc

tera

tera

onc

tera

onc, tera

tera

tera

onc, repro

onc, repro, tera

tera

onc

Chemical

Propanil

Propetamphos

Propiconazole

Propylene oxide

Pyrazon

Pyrethrin and derivatives

Pyrimidinone

Sehoxydim

Siduron

Sodium fluoride

Sulfometuron-methyl

TBT-containing compounds

TCMB

Temephos

Tetrachlorovinphos

Tetramethrin

Thiabendazole and salts

Thidiazuron

Thiodicarb

Thiophanate-methyl

Thiram

Triadimefon

Triclopyr and salts

Vernolate

Revised: January 1, 1998

Data Requirements

onc, repro

tera

onc

tera

onc, repro

onc, tera

onc, tera

onc

onc, repro, tera

tera

onc, tera

onc, tera

onc, repro, tera

onc, tera

onc

onc

onc, repro, tera

onc, repro, tera

tera

onc, tera

onc

onc, repro

onc

onc, repro

HISTORY

1. New section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 17).
2. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 90, No. 2).
3. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 17).
4. Editorial correction of subsection (d) (Register 91, No. 31).
5. Editorial correction of printing error (Register 91, No. 43).
6. Editorial correction instituting inadvertently omitted amendment. Submitted OAL for printing only pursuant to Government Code section 11343.8 (Register 93, No. 20).
7. Editorial correction of printing errors (Register 93, No. 45).
8. Amendment of subsection (d) filed 8-1-94. Submitted to OAL for printing or (Register 94, No. 31).
9. Amendment of subsections (b), (c), and (d) filed 12-23-94. Submitted to O for printing only (Register 95, No. 1).
10. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 95, No. 52).
11. Amendment filed 1-30-97; operative 1-30-97. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 97, 5).
12. Amendment of subsections (b), (c) and (d) filed 2-13-98; operative 2-13-98. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 98, No. 7).

[The next page is 201.]

Animal bioassay data is admissible and generally indicative of potential effects in humans.

For purposes of this regulation, substances are present occupationally when there is a possibility of exposure either as a result of normal work operations or a reasonably foreseeable emergency resulting from workplace operations. A reasonably foreseeable emergency is one which a reasonable person should anticipate based on usual work conditions, a substance's particular chemical properties (e.g., potential for explosion, fire, reactivity), and the potential for human health hazards. A reasonably foreseeable emergency includes, but is not limited to, spills, fires, explosions, equipment failure, rupture of containers, or failure of control equipment which may or do result in a release of a hazardous substance into the workplace.

(b) Administrative Procedure Followed by the Director for the Development of the Initial List. The Director shall hold a public hearing concerning the initial list. The record will remain open 30 days after the public hearing for additional written comment. Requests to exempt a substance in a particular physical state, volume, or concentration from the provisions of Labor Code sections 6390 to 6399.2 may be made at this time. If no comments in opposition to such a request are made at the public hearing or received during the comment period, or if the Director can find no valid reason why the request should not be considered, it will be incorporated during the Director's preparation of the list.

After the public comment period the Director shall formulate the initial list and send it to the Standards Board for approval. After receipt of the list or a modified list from the Standards Board, the Director will adopt the list and file it with the Office of Administrative Law.

(c) Concentration Requirement. In determining whether the concentration requirement of a substance should be changed pursuant to Labor Code section 6383, the Director shall consider valid and substantial evidence. Valid and substantial evidence shall consist of clinical evidence or toxicological studies including, but not limited to, animal bioassay tests, short-term in vitro tests, and human epidemiological studies. Upon adoption, a regulation indicating the concentration requirement for a substance shall consist of a footnote on the list.

(d) Procedures for Modifying the List. The Director will consider petitions from any member of the public to modify the list or the concentration requirements, pursuant to the procedures specified in Government Code section 11347.1. With petitions to modify the list, the Director shall make any necessary deletions or additions in accordance with the procedures herein set forth for establishing the list. The Director will review the existing list at least every two years and shall make any necessary additions or deletions in accordance with the procedures herein set forth for establishing the list.

(e) Criteria for Modifying the List. Petitions to add or remove a substance on the list, modify the concentration level of a substance, or reference when a particular substance is present in a physical state which does not pose any human health risk must be accompanied with relevant and sufficient scientific data which may include, but is not limited to, short-term tests, animal studies, human epidemiological studies, and clinical data. If the applicant does not include the complete content of a referenced study or other document, there must be sufficient information to permit the Director to identify and obtain the referenced material. The petitioner bears the burden of justifying any proposed modification of the list.

The Director shall consider all evidence submitted, including negative and positive evidence. All evidence must be based on properly designed studies for toxicological endpoints indicating adverse health effects in humans, e.g., carcinogenicity, mutagenicity, neurotoxicity, organ damage/effects.

For purposes of this regulation, animal data is admissible and generally indicative of potential effects in humans.

The absence of a particular category of studies shall not be used to prove the absence of risk.

Inherent insensitivities, negative results must be reevaluated in light of the limits of sensitivity of each study, its test design, and the protocol followed.

In evaluating different results among proper tests, as a general rule, positive results shall be given more weight than negative results for purposes of including a substance on the list or modifying the list in reference to concentration, physical state or volume, so that appropriate information may be provided regarding those positive results. In each case, the relative sensitivity of each test shall be a factor in resolving such conflicts.

NOTE: Authority cited: Section 6380, Labor Code. Reference: Sections 6361, 6380, 6380.5, 6382 and 6383, Labor Code.

#### HISTORY

1. New article 5 (section 337) filed 11-5-81; effective thirtieth day thereafter (Register 81, No. 45).
2. Amendment of subsection (d) filed 1-15-87; effective upon filing pursuant to Government Code section 11346.2(d) (Register 87, No. 3).
3. Editorial correction of HISTORY 2. (Register 91, No. 19).

### § 338. Special Procedures for Supplementary Enforcement of State Plan Requirements Concerning Proposition 65.

(a) This section sets forth special procedures necessary to comply with the terms of the approval by the United States Department of Labor of the California Hazard Communication Standard, pertaining to the incorporation of the occupational applications of the California Safe Drinking and Toxic Enforcement Act (hereinafter Proposition 65), as set forth in 62 Federal Register 31159 (June 6, 1997). This approval specifically placed certain conditions on the enforcement of Proposition 65 with regard to occupational exposures, including that it does not apply to the conduct of manufacturers occurring outside the State of California. A person proceeding "in the public interest" pursuant to Health and Safety Code § 25249.7(d) (hereinafter "Supplemental Enforcer") or any district attorney or city attorney or prosecutor pursuant to Health and Safety Code § 25249.7(c) (hereinafter "Public Prosecutor"), who alleges the existence of violations of Proposition 65, with respect to occupational exposures as incorporated into the California Hazard Communication Standard (hereinafter "Supplemental Enforcement Matter"), shall comply with the requirements of this section. No Supplemental Enforcement Matter shall proceed except in compliance with the requirements of this section.

(b) 22 CCR § 12903, setting forth specific requirements for the content and manner of service of sixty-day notices under Proposition 65, in effect on April 22, 1997, is adopted and incorporated by reference. In addition, any sixty-day notice concerning a Supplemental Enforcement Matter shall include the following statement:

"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. This approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substitute court orders in this matter must be submitted to the Attorney General.

(c) A Supplemental Enforcer or Public Prosecutor who commences a Supplemental Enforcement Matter shall serve a file-endorsed copy of the complaint upon the Attorney General within ten days after filing the Complaint.

(d) A Supplemental Enforcer or Public Prosecutor shall serve upon the Attorney General a copy of any motion, or opposition to a motion,

## 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 (*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 28, 2004

Place of Mailing: Irvine, California

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

Counsel for SSR Realty Advisors, Inc.  
Metric Property Management, Inc.  
Stephanie A. Sheridan  
Sedgwick Detert Moran & Arnold LLP  
One Embarcadero Center, 16<sup>th</sup> Floor  
San Francisco, CA 94111-3628

Los Angeles County District Attorney  
210 W. Temple Street, 18th Fl.  
Los Angeles, CA 90012

Orange County District Attorney  
700 Civic Center Dr. W., 2<sup>nd</sup> Fl  
Santa Ana, CA 92701

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

Riverside County DA  
4075 Main St., 1<sup>st</sup> Fl.  
Riverside, CA 92501

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

Los Angeles City Attorney  
200 N. Main St. N.E.  
Los Angeles, CA 90012

Alameda County DA  
1225 Fallon Street  
Oakland, CA 94612

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

Contra Costa County DA  
727 Court Street  
Martinez, CA 94553

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

Dated: May 28, 2004

---