

## **CONSUMER DEFENSE GROUP ACTION**

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950 South Coast Drive, Suite 220

Costa Mesa, CA 92626

Telephone: (714) 850-9390

Facsimile: (714) 850-9392

### **60 Day Notice of Intent to Sue FIRST BANK, INC. and FIRST BANK 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 Allen H. Blake, President, Chief Executive Officer of First Banks, Inc. and Terrance M. McCarthy, President and Chief Executive Office of FIRST BANK, operating banking facilities under the name "First Bank & Trust" in California (hereinafter referred to collectively as "FIRST BANK" or "the Violator"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through its counsel Anthony G. Graham at the above address.

This Notice is intended to inform FIRST BANK 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 each of the Facilities listed on Exhibit A hereto (which are owned/managed by FIRST BANK) (hereinafter "the Facilities") that FIRST BANK 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.

#### **Summary of Violation:**

Proposition 65 requires that when a party, such as the Violator, has been and is knowingly and intentionally exposing its customers, the public and/or its employees 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 is one of the 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 listed on Exhibit A to this Notice (hereinafter, "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 cigarettes and cigars. At certain designated areas at each of the Facilities the Violator has prohibited smoking and has posted signs barring smoking in those areas. The Violator strictly enforces that prohibition.

However, the Violator has also specifically chosen to allow its customers, visitors and employees at each of the Facilities to smoke cigarettes and cigars in certain areas. Those areas are the entrances to the Facilities and the areas surrounding the partially-covered/uncovered ATM machines where the Violator conducts business at the locations in the attached Exhibit A. In those areas the Violator has chosen to allow its customers, visitors and employees to be exposed to tobacco smoke via the breathing of second hand tobacco smoke and via contact with their skin and clothing. The Violator has however specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings at those areas so that its customers, visitors and employees, who may not wish to be

exposed, can be warned that, upon entering and/or using the bank facilities in those areas, they may be exposed to tobacco smoke.

Persons representing CDG have personally visited each of the Facilities during August/October, 2005 (hereinafter referred to as the "Investigation Period"). During those investigations CDG discovered that the Facilities are owned and/or managed by FIRST BANK, and that FIRST BANK has more than nine employees. Those investigations showed that FIRST BANK 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 entrances to the Facilities and the areas surrounding the ATM machines where the Violator conducts business at the locations in the attached Exhibit A.

In the Facilities and areas noted FIRST BANK has chosen to allow its customers, visitors and employees to be exposed to tobacco smoke via the breathing of second hand tobacco smoke and via contact with their skin and clothing. Evidence that the smoking of tobacco products was taking place and had taken place at the noted areas at the Facilities was seen by the investigators for CDG at the Facilities during the Investigation Period, including persons seen smoking in these areas and the presence of cigarette butts on the ground in those areas. The presence of such smokers, the cigarette butts on the ground as well as the presence of cigarette disposal receptacles/ashtrays in those areas is evidence of the knowledge of FIRST BANK that such activities occurred in those areas and were permitted by it.

The investigation by CDG at the Facilities showed that FIRST BANK has specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings in the areas noted above where smoking is permitted 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, a chemical 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 FIRST BANK has owned and/or controlled the Facilities prior to the Investigation Period, FIRST BANK 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 is four years, this Notice is intended to inform FIRST BANK 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 every day upon which FIRST BANK owned and/or controlled 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 locations in the attached Exhibit A, for up to four years prior to 10/30/05, 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 exposures is tobacco smoke. The areas where exposures occur are the entrances to the Facilities and the areas surrounding the ATM machines where the Violator conducts business at the locations in the attached Exhibit A.

#### **Occupational Exposures:**

While in the course of doing business , at the locations in the attached Exhibit A, for up to four years prior to 10/30/05, the Violator has been and is knowingly and intentionally exposing employees of the violator to tobacco and 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 person (Health & Safety Code Section 25249.6). 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. Such exposure takes place in the areas where exposures occur are the entrances to the Facilities and the areas surrounding the ATM machines where the Violator conducts business at the locations in the attached Exhibit A.

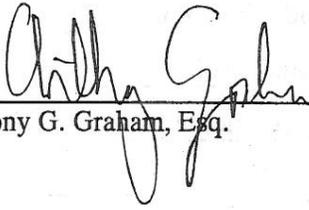
The route of exposure for Occupational Exposures and Environmental Exposures to the chemicals listed below has been inhalation, ingestion and dermal contact with tobacco smoke at the locations in the attached Exhibit A. In other words, via the breathing of tobacco smoke and contact with the skin at those locations. For each such type and means of exposure, the violator has exposed and is exposing the above referenced persons to:

**SEE ATTACHED LIST OF CARCINOGENS/TOXINS**

Proposition 65 requires that notice and intent to sue be given to the violators (60) days before the suit is filed. With this letter, Consumer Defense Group Action 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 Consumer Defense Group Action from information now available to them. CDG continues to investigate other Facilities owned and/or managed by the Violator and reserves the right to amend this Notice to include additional Facilities and/or exposures. With the copy of this notice submitted to the violations, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

Dated: November 11, 2005

By:

  
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Anthony G. Graham, Esq.

## LIST OF CARCINOGENS

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)	

## LIST OF REPRODUCTIVE TOXINS

Arsenic (inorganic Oxides)	Cadmium
Carbon disulfide	Carbon monoxide
Lead	Nicotine
Toluene	Tobacco Smoke
Urethane	

**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.

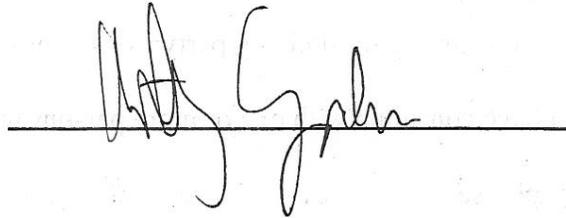
2. I am member of the State Bar of California, a partner of the law firm of Graham & Martin, LLP, and attorney for noticing party Consumer Defense Group Action.

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 Costa Mesa, California on November 11, 2005.

A handwritten signature in black ink is written over a solid horizontal line. The signature is cursive and appears to read "A. J. G. G. G.". The line extends across the width of the signature.

**EXHIBIT A**

**FIRST BANK & TRUST**

16900 Golden West Street Huntington Beach, Ca. 92647	2400 Michelson Drive Irvine, CA 92612
8251 Westminster Blvd. Westminster, CA 92683	18020 Brookhurst Street Fountain Valley, CA 92708
3001 Harbor Blvd. Costa Mesa, CA 92626	

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 950 South Coast Drive, Suite 220, Costa Mesa, California 92626.

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*)

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: November 14, 2005

Place of Mailing: Costa Mesa, California

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

Terrance M. McCarthy  
President and Chief Executive Office  
First Bank  
11901 Olive Boulevard  
Creve Coeur, MO 63141

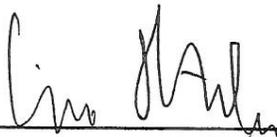
Allen H. Blake  
President, Chief Executive Officer  
First Banks, Inc.  
135 N. Meramec Avenue  
Clayton, MO 63105

California Attorney General  
(Proposition 65 Enforcement Division)  
1515 Clay Street, 20th Floor  
Oakland, CA

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

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

Dated: November 14, 2005

  
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