

July 6, 2006

Dave McCaslin, President
Merriott Hospitality LLC
101 Merritt 7 Corporate Park, First Floor
Norwalk, CT 06851

Re: Sixty Day Notice of Intent to Sue Merriott Hospitality LLC For Violating California Health & Safety Code § 25249.6

Dear Mr. McCaslin:

As required under law, this letter is to sent to you by Brian Fagan as agent for Brian Fagan LLC as sixty days notice of its intent to sue your company Merriott Hospitality LLC for violating California Health & Safety Code Section 25249.6 by failing to post a clear and reasonable warning at the parking structure you own/lease, control, operate and manage located at the Embassy Suites Hotel, 2120 Main Street, Irvine, CA 92614.

Merriott Hospitality LLC operates, controls and manages the property located at the Embassy Suites Hotel, 2120 Main Street, Irvine, CA 92614, part of the "Irvine Concourse", a very large commercial site. At that location Merriott Hospitality LLC controls, operates and manages a multi-storey parking structure, consisting of 6 covered parking levels and one below street level parking level. The parking structure provides parking for guests, visitors and employees of the hotel. The facility has one driving entrance for the hotel guests, visitors and employees and a number of entrances for persons walking to and from the structure, internal and external stairs and two elevators.

As you know automotive exhaust fumes contain a number of chemicals listed by the State of California as being known to cause cancer and/or reproductive toxicity. The specific chemicals known to the State of California to cause cancer and/or reproductive toxicity and which are contained in automotive exhausts are as follows: Acetaldehyde; 1,3-Butadiene; 1,6-Dinitropyrene; 1,8-Dinitropyrene; 1-Nitropyrene; 2-Nitrofluorene; 3,7-Dinitrofluoranthene; 3,9-Dinitrofluoranthene; 5-Methylchrysene; Acetaldehyde; Arsenic (inorganic arsenic compounds); Benz[a]anthracene; Benzene; Benzo[a]pyrene; Benzo[b]fluoranthene; Benzo[j]fluoranthene; Benzo[k]fluoranthene; Cadmium; Carbon monoxide; Chrysene; Cobalt [II] oxide; Dibenz[a,h]acridine; Dibenz[a,h]anthracene; Dibenz[a,j]acridine; Dibenzo[a,h]pyrene; Diesel engine exhaust; Formaldehyde (gas); Indeno [1,2,3-cd]pyrene; Lead; Lead and lead compounds; Nickel; and, Toluene. Everyone who uses the parking structure, guests, hotel visitors and employees, security guards, administrative, maintenance and cleaning personnel are exposed the these chemicals every day on which they use or otherwise enter the parking structure since they will of necessity breathe in these chemicals from cars which are in use in the parking structure.

On June 25, 2006 and again on July 5, 2006, an investigator for Brian Fagan LLC visited the property and observed that, despite the fact that hundreds of people are each day exposed to

the relevant chemicals every day, Merriott Hospitality LLC does not provide a warning of any kind as required by California Health & Safety Code Section 25249.6. The investigator examined the single parking entrance as well as each of the stairway entrances, elevator banks and pedestrian entrances and saw no warning sign anywhere related to California Health & Safety Code Section 25249.6, Proposition 65, any of the chemicals identified herein or any chemicals at all. The investigator identified himself to the hotel receptionist and informed her he was examining the parking structure for violations of the California Health & Safety Code and was taking photographs of the various entrances and walkways. Copies of those photographs have been provided to the Office of the Attorney General.

Included with this Sixty Day Notice of Intent to Sue Merriott Hospitality LLC is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" as well as the required "Certificate of Merit". This Sixty Day Notice of Intent to Sue Merriott Hospitality LLC has been sent to the Orange County District Attorney and to the California Attorney general, along with supporting information.

Should this matter proceed to litigation the noticing party will be seeking an injunction requiring the posting of a clear and reasonable warning at each entrance to the parking structure, civil penalties of up to \$2500 per day and attorneys fees and costs. If you wish to contact the noticing party you may do so by contacting its agent Brian Fagan, located at 5942 Edinger Avenue, Suite 113, Huntington Beach, CA 92649, telephone number (714) 209-6216.

Yours,



Brian Fagan

CERTIFICATE OF MERIT

I, Brian Fagan, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that Merriott Hospitality LLC has violated Health and Safety Code section 25249.6 by failing to provide a clear and reasonable warning for exposure to paint fumes.

2. I am the person who prepared and sent the 60 Day Notice. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the alleged exposures to the listed chemicals that are the subject of the action.

3. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiffs’ case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

4. The 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 Huntington Beach, California on July 6, 2006.



CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of the county where the mailing occurred. My address is 5942 Edinger Avenue, Suite 113, Huntington Beach, CA 92649.

I served the 60-Day Notice of Intent to Sue Under Health & Safety Code Section 24249.6 and "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary", by US Mail on July 6, 2006 on the following persons:

Dave McCaslin, President
Merriott Hospitality LLC
101 Merritt 7 Corporate Park, First Floor
Norwalk, CT 06851

California Attorney General
Proposition 65 Notice
1515 Clay Street, 20th Floor
P O Box 70550
Oakland, CA 94612

Orange County District Attorney
700 Civic Center Dr. W., 2nd 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: July 6, 2006


