

July 25, 2006

**Sixty Day Notice of Intent to Sue For Violating California  
Health & Safety Code § 25249.6**

George L. Argyros, President  
Arnel Management Company  
949 South Coast Drive, Suite 600  
Costa Mesa, CA 92626

**Re: Sixty Day Notice of Intent to Sue Arnel Management Company For Violating  
California Health & Safety Code § 25249.6**

Dear sir:

As required under law, this letter is to sent to you by Brian Fagan LLC as sixty days notice of its intent to sue Arnel Management Company, a company with more than nine employees, for violating California Health & Safety Code Section 25249.6 by failing to post a clear and reasonable warning at a parking structure Arnel Management Company owns, controls, manages and operates at the Metro Pointe Plaza shopping center located at South Coast Drive, Costa Mesa, CA 92626.

At the Metro Pointe Plaza shopping center located at South Coast Drive, Costa Mesa, CA 92626, Arnel Management Company owns, controls, operates and manages a multi-storey parking structure, which includes one above ground level and a below ground parking level. The parking structure provides parking for the Arnel Management Company employees, employees of the various businesses located at 949 South Coast Drive, Costa Mesa, CA 92626, employees of the retail establishments at the shopping plaza as well as shoppers, security personnel, administrative and cleaning personnel. The parking structure is located in the center of the shopping plaza, has one major driving entrance at the bottom of a ramp leading down from South Coast Drive, one subsidiary entrance which is little used, five stairways, a ramp for handicapped entrance, an elevator and an escalator.

Automotive exhaust fumes contain a number of chemicals listed by the State of California as being known to the State of California 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; Dibenz[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, including Arnel Management Company employees, employees of the various businesses located at 949 South Coast Drive, Costa Mesa, CA 92626, employees of the

retail establishments at the shopping plaza as well as shoppers, security personnel, administrative and cleaning personnel are exposed to these chemicals every day on which they use the parking structure since they will inevitably breathe in these chemicals from the car exhausts from cars which are or have been in use in the parking structure.

On July 12, 2006, and again on July 25, 2006, an investigator for Brian Fagan LLC visited the site and observed that, despite the fact that many hundreds of people, including the investigator on that day, are exposed to the relevant chemicals every day, Arnel Management Company does not provide a warning of any kind as required by California Health & Safety Code Section 25249.6 at the major driving entrance at the bottom of a ramp leading down from South Coast Drive, five stairways, a ramp for handicapped entrance, an elevator and an escalator. The investigator examined the driving entrance as well as the pedestrian entrance and stairway 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 took photographs of the various entrances and walkways. Copies of those photographs have been provided to the Office of the Attorney General. The only sign was located at the minor entrance/exit located on the freeway side of the structure (next to the 405 freeway) and was located on a pillar facing into the facility. The sign was made of white lettering on a pale beige background and almost impossible to see, let alone read, unless a person were standing directly in front of the sign, something very unlikely for a driver entering the facility. The fact that Arnel Management Company has such a hidden sign presented in such a manner as to render it almost invisible is evidence of its knowledge that such a sign is necessary and its desire that such a sign not be seen. The fact that no such sign is present at the main entrance, nor the five stairways, nor the ramp for handicapped entrance, nor at the elevator or the escalator is evidence of Arnel Management Company's intent to avoid the requirements of the statute which requires a "clear and reasonable" warning be provided to all persons likely to be affected by the exposure. One hidden practically invisible sign, presented in such a way as to be almost unreadable, and located on one inside facing pillar at one minor entrance out of ten entrances, including the main driving entrance, is not a "clear and reasonable" warning to the vast majority of persons using the parking structure.

Included with this Sixty Day Notice of Intent to Sue Arnel Management Company 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 Arnel Management Company 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 of the entrances to the parking structure, civil penalties and attorneys fees and costs. If you wish to contact the noticing party prior to litigation 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,

  
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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 Arnel Management Company has violated Health and Safety Code section 25249.6 by failing to provide a clear and reasonable warning for exposure to automotive 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 25, 2006.

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**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 25, 2006 on the following persons:

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., 2<sup>nd</sup> Fl.  
Santa Ana, CA 92701

George L. Argyros, President  
Arnel Management Company  
949 South Coast Drive, Suite 600  
Costa Mesa, CA 92626

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

Dated: July 25, 2006



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