

**60-Day Notice of Violations: Failure to Warn Public About Chemical Listed Under
Health & Safety Code Section 25249.6**

October 18, 2007

Mike Drouin
Prometheus Real Estate Group
Americana Apartments
707 Continental Circle
Mountain View, CA 94040

The Tan Group
3700 Campus Drive #107
Newport Beach, CA 92660

All Seasons Roofing Services
1720 Smith Ave.
San Jose, CA 95112

American Estate Co.
870 E. Charleston Rd., Suite 200
Palo Alto, CA 94303

Youritan Construction
3630 El Camio Real
Palo Alto, CA 94306

The Honorable Dolores Carr
Santa Clara County District Attorney
70 W. Hedding St., West Wing
San Jose, CA 95110

Edmund G. Brown, Jr.
California Attorney General (Proposition
65 Enforcement Reporting)
ATTN: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

City Attorney of Mountain View
500 Castro St # 3
Mountain View, CA 94041

Re: Notice of Violations of California Health & Safety Code §25249.5 et seq.

Dear Gentlepersons:

This firm represents certain tenants of the Americana Apartments, 707 Continental Circle, Mountain View, CA 94040, including but not limited to, Eric Spitzer and Julie Sliva Spitzer, in connection with this notice of violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5 *et seq.* This letter constitutes notification that Prometheus Real Estate Group, American Estate Co., Youritan Construction, the Tan Group and All Seasons Roofing Services have violated Proposition 65.

Pursuant to §25249.7(d) of the statute, the tenants intend to bring an enforcement action against the above-referenced entities sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations. A summary of the statute and its implementing regulations, which was prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The names of the violators covered by this notice are: Prometheus Real Estate Group, American Estate Co, Youritan Construction, The Tan Group, and All Seasons Roofing Services and each of their respective affiliates (collectively, the "Noticees"). The Noticees are currently or have been involved in operation, maintenance and construction activities at 707 Continental Circle, Mountain View, CA 94040, Buildings One, Two, Three, Four and Five (the "Site") (a map of the Site is attached hereto). These activities have included roof removal and roofing and other Site management work, as well as the inspection and maintenance of the Site. These ongoing environmental violations of Proposition 65 arise out of failure to warn of asbestos releases or threatened releases caused by the Noticees' activities at the Site. On February 27, 1987, the State of California officially listed asbestos as a chemical known to cause cancer.

Environmental Warnings At Issue. The Site is located at 707 Continental Circle, Mountain View, California (see attached Site map). Persons who were entitled to a warning include all persons entering the Site since the project's inception, including, but not limited to, the Noticees' tenants, guests, and invitees.

The Americana Apartments is a large apartment complex with several three story buildings. The tenants include adults, infants, and children. In August the landlord began re-roofing several apartment buildings and has completed re-roofing Buildings One, Two Three and Four and is in the process of re-roofing Building Five. The ceilings of the apartments consist of acoustic spray-on ceilings which contain asbestos. This asbestos was disclosed to several tenants at the time they leased the property in various notifications, including a Proposition 65 notification. The notification warned the tenants not to disturb the ceiling. The work to remove and install the roofs shook the buildings causing significant asbestos dust to begin falling from poorly maintained ceilings into the apartments.

The Noticees were required to comply with the California law H & S Code § 25915 *et. seq.* regarding managing asbestos and notifying lessees and contractors of asbestos risk. The Noticees had knowledge of the California asbestos laws (as reflected in asbestos notifications Noticees provided to the tenants) and knew they had an obligation to notify the tenants annually of the asbestos risks and to regularly monitor, inspect and manage the asbestos known to exist in the building. As a result of failure to abide by the

California asbestos laws, the ceilings of several units in the apartment complex with asbestos-containing ceiling material were not properly maintained, and are friable. Consequently, asbestos containing dust has been raining down in several apartments for years without proper notification or warning.

As the work at Buildings One through Four proceeded, the Noticees knew or should have known that asbestos dust was released and threatened to be released at Buildings One through Four. Accordingly, Noticees knew or should have known prior to beginning work on Building Five that the work would dislodge poorly maintained asbestos ceiling material in residential apartments. Nonetheless, the work continued at Building Five without any warning notice to the tenants.

On October 5, 2007, a meeting was held between the Building Five tenants and Noticees and a demand was made to halt the work on the roof and to test the apartments for asbestos. The Noticees refused to perform testing or slow down the roofing project. Later a representative of the Bay Area Quality Management District came to the building and indicated that there was asbestos coming into the apartments and that residents should consider calling other government agencies and perhaps vacating the premises.

On Tuesday, October 9, 2007, the tenants received the wipe sampling results showing high levels of asbestos dust in their apartment. Also, the apartments flooded due to raining while the roof was opened up for repairs.

Route of exposure. The asbestos exposures that the tenants should have been warned of are through inhalation and ingestion.

Duration of violations. These violations began with the lack of maintenance of the asbestos containing ceilings ten years ago, and will continue every day until appropriate remedial efforts are undertaken by Noticees to abate the violations. Information available to the tenants, including over the past year, established asbestos concentrations in dust as high as 1,200,000 s/cm².

Counsel. The tenants will be represented in connection with this matter by:

Jeffrey S. Lawson
Silicon Valley Law Group
25 Metro Drive, Suite 600
San Jose, CA 95110

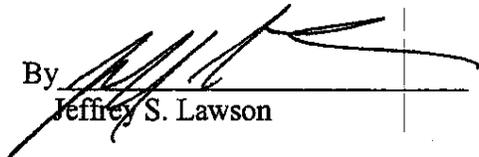
In keeping with the public interest goals of the statute and the tenant's objective of protecting the community from further unlawful toxic exposures, we are interested in seeking a constructive resolution of this matter to avoid continuing unwarned exposure to asbestos without protracted litigation. While we intend to file a citizen enforcement

action against the Noticees upon the expiration of the 60-day notice, we are also willing to discuss effective remedies for the violations noted in this letter. The suit will include causes of action for breach of warranty of habitability, negligence, and negligence *per se* for violation of asbestos notice and management laws under Health & Safety Code §25915 *et seq.* In addition, the suit will allege that the testing for asbestos was deliberately delayed and improperly conducted to avoid producing data that would require notifying the tenants of the extent of asbestos contamination of their apartments. If you wish to pursue discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint if discussions are continuing when that period ends.

Please direct all communications regarding this notice to Jeffrey S. Lawson at the above-listed firm address and telephone number.

Very truly yours,

SILICON VALLEY LAW GROUP
A Law Corporation

By 
Jeffrey S. Lawson

JSL:edn

Attachments:

OEHHA Summary
Certificate of Merit (w/o AG attachments)
Certificate of Service



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**Welcome to the online source for the
 California Code of Regulations**

22 CA ADC Appendix A

22 CCR Appendix A

Cal. Admin. Code tit. 22, Appendix A

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
 TITLE 22. SOCIAL SECURITY
 DIVISION 2. DEPARTMENT OF SOCIAL SERVICES -DEPARTMENT OF HEALTH SERVICES
 SUBDIVISION 1. HEALTH AND WELFARE AGENCY
 CHAPTER 3. SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
 ARTICLE 9. MISCELLANEOUS

This database is current through 10/05/07, Register 2007, No. 40

Appendix A

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 735 chemical listings have been included as of November 16, 2001. 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 has 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" or "no observable effect" test if an individual were exposed to such an 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, but 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 12903). 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 civil 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.

22 CCR Appendix A, 22 CA ADC Appendix A
1CAC

22 CA ADC Appendix A

END OF DOCUMENT

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THOMSON
WEST

CERTIFICATE OF MERIT

(for Eric Spitzer and Julia Sliva Spitzer Notice of Proposition 65
Violation at Americana Apartments)

I, Jeffrey S. Lawson, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that Prometheus Real Estate Group, American Estate Co, Youritan Construction, the Tan Group, and All Seasons Roofing Services have violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

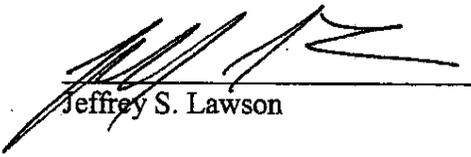
2. I am the attorney for the noticing party.

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 exposure 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 that 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 the 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 §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.

Dated: 18 Oct 07



Jeffrey S. Lawson

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 25 Metro Drive, Suite 600, San Jose, California 95110.

On October 18, 2007, I served the following documents:

60-Day Notice of Violations: Failure to Warn Public About Chemical Listed Under Health & Safety Code Section 25249.6 et seq., including Exhibit A, Certificate of Merit, Attachment to Certificate of Merit with Attachments, "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary".

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below; and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Edmund G. Brown Jr.
California Attorney General (Proposition 65 Enforcement Reporting)
Attn: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

Attn: Ed Weil, Deputy Attorney General
California Department of Justice
P.O. Box 70550
Oakland, CA 94612-0550

On October 18, 2007, I served the following documents(s):

60-Day Notice of Violations: Failure to Warn Public About Chemical Listed Under Health & Safety Code Section 25249.6 et seq., including Exhibit A, Certificate of Merit, "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary".

And on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at a United States Postal Service Office for delivery by First Class Mail.

Executed on October 18, 2007, at San Jose, California.



Liz Norm

SERVICE LIST

Mike Drouin
Prometheus Real Estate Group
Americana Apartments
707 Continental Circle
Mountain View, CA 94040

The Tan Group
3700 Campus Drive #107
Newport Beach, CA 92660

All Seasons Roofing Services
1720 Smith Ave.
San Jose, CA 95112

American Estate Co.
870 E. Charleston Rd., Suite 200
Palo Alto, CA 94303

Youritan Construction
3630 El Camio Real
Palo Alto, CA 94306

The Honorable Dolores Carr
Santa Clara County District Attorney
70 W. Hedding St., West Wing
San Jose, CA 95110

John Rea, Acting Director
Department of Industrial Relations
455 Golden Gate Ave.
San Francisco, CA 94102

Len Welsh, Acting Chief
Div. of Occupational Safety & Health
1515 Clay St., Suite 1901
Oakland, CA 94612

City Attorney of Mountain View
500 Castro St. #3
Mountain View, CA 94041