

SAN FRANCISCO OFFICE  
1 EMBARCADERO CENTER, SUITE 1310  
SAN FRANCISCO, CALIFORNIA 94111  
(415) 788-0207  
FAX (415) 447-0066  
(RESPOND TO THIS OFFICE)



SAN DIEGO OFFICE  
655 WEST BROADWAY, SUITE 880  
SAN DIEGO, CALIFORNIA 92101  
(619) 233-3565  
FAX (619) 233-9841

June 5, 2009

Attorney General of the State of California  
Attn: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, California 94612-0550

Re: Address: Metropolitan Condominiums  
333 - 355 First Street  
San Francisco, California 94105  
AG Number: None assigned.

### NEW COMPLAINT

Dear Attorney General:

We are the attorneys for the owners of 28 condominium units of the Metropolitan Condominiums at the above addresses. The units were sold to the owners as brand new properties.

All of the condominium units were sold with kitchen cabinetry consisting of particle board containing formaldehyde. Enclosed please find a report from our engineering expert Stephen Vianni, attesting to the presence of formaldehyde in the wood of the cabinetry at the level of 500 mg/kg, in unit N1604. The cabinetry in unit N1604 is identical to the cabinetry in all the other units of the owners represented by this law firm. The other units are: N206, N402, N1407, N1904, N1806, N2007, S303, S604, S608, S803, S807, S906, S1006, S1008, S1110, S1502, S1503, S1608, S1908, S1208, S1802, S2007, S2103, S2205, S2402, S2602, SPH 2801.

The condominiums were built by Howard Wright Construction Inc., and sold by developers Folsom/First LLC and Crescent Heights, Inc., to the owners, from approximately 2005 on.

At the time of the respective sales, no disclosure was specifically made of the presence of formaldehyde in the cabinetry. A general Proposition 65 warning may have been included in the sale documents. However, the general warning made no clear and reasonable mention of formaldehyde.

Under the California Safe Water and Toxic Enforcement Act of 1986 (Proposition 65), Health & Safety Code §25249.6 mandates that: "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer

California State Attorney General

June 5, 2009

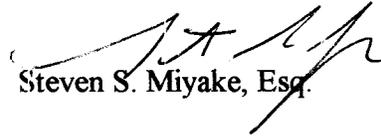
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or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.” Section 25249.11(f) defines the type of warnings that must be given. Section 25249.10 provides an exemption from this warning requirement for, *inter alia*, exposures that pose “no significant risk” according to the guidelines prescribed by Section 25249.10(c). Section 25249.8 sets forth the chemicals for which the Section 25249.6 warning must be made. Section 25249.8 includes those chemicals listed in California Labor Code §6382(b)(1) and (d). Labor Code §6382(b)(1) refers to substances listed as human or animal carcinogens by the International Agency for Research on Cancer (“IARC”). The IARC lists formaldehyde as a chemical which is carcinogenic to humans. Therefore this warning requirement applies to the existence of formaldehyde if the seller/developer knew of its existence in the cabinet material.

We are therefore reporting this violation to you as required by California Health & Safety Code §25249.7(d). We shall await your response. Should you have need of further information, please contact the undersigned at (415) 421-4400.

Thank you very much for your assistance.

Very truly yours,



Steven S. Miyake, Esq.

Enc:

Cc: All clients w/Encl.  
David Webster, Esq. w/Encl.  
Matthew J. Marino, Esq. w/Encl.  
Denis F. Shanagher, esq. w/Encl.



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June 9, 2009

Attorney General of the State of California  
Attn: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
P O. Box 70550  
Oakland, California 94612-0550

Re: Address: Metropolitan Condominiums  
333 - 355 First Street  
San Francisco, California 94105  
AG Number: None assigned.

**HEALTH & SAFETY CODE §25249.7(d)(1)  
CERTIFICATE OF MERIT**

Dear Attorney General:

We are the attorneys for the owners of 28 condominium units of the Metropolitan Condominiums at the above addresses. The units were sold to the owners as brand new properties.

I am informed and believe, and thereupon allege, the following:

1. The condominium units affected by this notice are N206, N402, N1407, N1604, N1904, N1806, N2007, S303, S604, S608, S803, S807, S906, S1006, S1008, S1110, S1502, S1503, S1608, S1908, S1208, S1802, S2007, S2103, S2205, S2402, S2602, SPH 2801, of the above addresses.
2. All of the condominium units were sold with kitchen cabinetry consisting of particle board containing formaldehyde. Enclosed please find a report from our engineering expert Stephen Vianni, attesting to the presence of formaldehyde in the wood of the cabinetry at the level of 500 mg/kg, in unit N1604. The cabinetry in unit N1604 is identical to the cabinetry in all the other units listed above. However, testing of the air in the hall bathroom yielded no indication of airborne formaldehyde.
3. The condominiums were built by Howard Wright Construction Inc., and sold by developers Folsom/First LLC and Crescent Heights, Inc., to the owners, from approximately 2005 on, at varying times, as brand new properties.

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4. At the time of the respective sales, no disclosure was specifically made of the presence of formaldehyde in the cabinetry. A general Proposition 65 warning may have been included in the sale documents. However, the general warning made no clear and reasonable mention, or any mention, of formaldehyde:

**Proposition 65.** In 1986 California voters approved Proposition 65, an initiative measure officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986. Proposition 65 requires an employer to warn persons of an exposure to certain chemicals which have been placed on a list the Governor as substances known to the State to cause cancer or reproductive toxicity. As the law currently exists, an employer must provide a Proposition 65 warning if there is a potential for such exposure unless it can be proven with certainty, through scientific testing and analysis that the exposure level is so small that it poses no significant risk to the person exposed. Some of the chemicals listed under Proposition 65 have long been used in building materials and may be found in such common construction products as cement, lumber, paint, carpeting, plastic and glass. **Warning:** Areas in the parking garage, models and respective Units contain chemicals known to the State of California to cause cancer, birth defects or other reproductive harm. (Paragraph 77, General Disclosure Items.)

5. Under the California Safe Water and Toxic Enforcement Act of 1986 (Proposition 65), Health & Safety Code §25249.6 mandates that: "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10." Section 25249.11(f) defines the type of warnings that must be given. Section 25249.10 provides an exemption from this warning requirement for, *inter alia*, exposures that pose "no significant risk" according to the guidelines prescribed by Section 25249.10(c). Section 25249.8 sets forth the chemicals for which the Section 25249.6 warning must be made. Section 25249.8 includes those chemicals listed in California Labor Code §6382(b)(1) and (d). Labor Code §6382(b)(1) refers to substances listed as human or animal carcinogens by the International Agency for Research on Cancer ("IARC"). The IARC lists formaldehyde as a chemical which is carcinogenic to humans. Therefore this warning requirement applies to the existence of formaldehyde if the seller/developer knew of its existence in the cabinet material.

6. The "geographical locations" of the violation are the respective kitchens of each condominium unit.

7. The "route of exposure" is in the form of inhalation of the vapors or fumes, if any, and dermal contact whenever the occupants are physically in their kitchens.

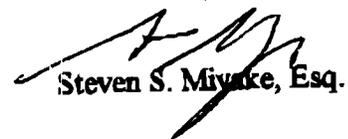
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8. The product which is the subject of the violation is the wood used in the construction of the cabinetry of each respective kitchen in each respective condominium.
9. The approximate time period of exposure is continuing, whenever the occupants of these condominiums use their kitchens, commencing from their respective move-ins.
- 10) The chemical which is the subject of this notice is formaldehyde.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true.

We are therefore reporting this violation to you as required by California Health & Safety Code §25249.7(d). We shall await your response. Should you have need of further information, please contact the undersigned at (415) 421-4400. Thank you very much for your assistance.

Very truly yours,



Steven S. Miyake, Esq.

Encl.

Cc. All clients w/Encl.  
David Webster, Esq. w/Encl.  
Matthew J. Marino, Esq. w/Encl.  
Denis F. Shanagher, Esq. w/Encl.  
Justice Dan Hanlon, JAMS