

Sixty Day Notice of intent to sue pursuant to California Health & Safety Code Section 25249.5 et seq.

This letter constitutes a Sixty Day Notice of Intent to Sue for violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 (California's Health & Safety Code Section 25249.5 et. Seq.), commonly known as Proposition 65. This Notice has been served upon each of the parties identified in the attached Proof of Service.

General Information

For general information regarding Proposition 65, please see the attached "The California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which was prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Description of Violations

Alleged Violators: California Real Estate Brokerages with 10 or more agents with a significant presence in Santa Clara County, as identified in the attachment to proof of service.

Time Period of Violations: Violations may date back to the initial enforcement date of Proposition 65. Violations have been personally observed since February 2009. The frequency and magnitude of these exposures have likely increased in recent years, as buildings are built to increasingly restrictive energy codes.

Consumer Product: Residential homes both:

- Single family detached including conventional site built, pre-fabricated, modular, and mobile homes;
- Single family attached including townhouses and condominiums.

Listed Chemicals Involved in Alleged Violation: Formaldehyde (gas) and acetaldehyde.

Route of Exposure: Inhalation while viewing the interiors of properties on the market for sale.

Nature of Alleged Violations: Real Estate Brokerages market previously owned and new residential properties to consumers. As part of the marketing process, real estate brokerages invite the public, potential clients, affiliates, and agents from the listing brokerage and from co-operating brokerages to visit listed properties

Agents employed by California Real Estate Brokerages in their ordinary work also show potential buyers the interiors of properties listed by their own Brokerages or by co-operating Brokerage firms.

Interior viewings occur during open houses geared toward the public and/or other agents. Viewings also occur through private showings arranged by the listing brokerage or co-operating brokerages. As a reasonably foreseeable result of these interior viewings, residents of California breathe the air within these homes. Formaldehyde (gas) and acetaldehyde concentrations in the indoor air are typically higher than the outside ambient air. It is common to find concentrations of formaldehyde (gas) in room air that exceed 50 ppb. Formaldehyde (gas) concentrations of 100 to 300 ppb are routinely found in room air. Acetaldehyde is often at a similar concentration as formaldehyde.

In the process of viewing the interiors of homes, California residents open cabinets, drawers, and closets. These activities typically result in exposures to higher concentrations of formaldehyde (gas) and acetaldehyde, often above 500 ppb.

Agents employed by California Real Estate Brokerages increase the concentrations of formaldehyde (gas) and acetaldehyde through staging. Staging furniture and props placed inside the listed homes can be substantial sources of formaldehyde (gas) and acetaldehyde.

Formaldehyde (gas) and acetaldehyde are both on the Governor's list as known to the State of California to cause cancer. California Real Estate Brokerages fail to warn California residents, including their own agents, prior to exposing them to the designated chemicals, formaldehyde (gas), and acetaldehyde, which occurs while showing listed properties. The concentrations of these chemicals are such that Prop. 65 safe harbor limits can be exceeded in time California residents would likely view a listed property. It is common practice for California residents to view multiple properties in a day, further exceeding the Prop. 65 safe harbor level.

California Real Estate Brokerages should be aware of these exposures. Formaldehyde is discussed in Chapter I of "*Residential Environmental Hazards: A Guide for Homeowners, Homebuyers, Landlords and Tenants.*" However, this booklet is not adequate warning, as the booklet is provided after the consumer has been exposed. When provided, this booklet is typically presented to the buyer in conjunction with preparing an offer or after an offer has been accepted.

Some Real Estate Brokerages use the C.A.R. New Construction Agreement and/or Addendum when a new home is purchased. This disclosure is also done at the time the offer is being prepared, not prior to the exposure.

This specific late and inadequate notice includes an explanation that in part reads:

Given the cost of testing, it is not feasible to test every home to ascertain the level of formaldehyde present.

This statement in the C.A.R. published forms is false. The cost to test for formaldehyde (gas) or total aldehydes ranges from \$8 to \$350.

Pursuant to Health and Safety Code Section 25249.7(d), the Noticing Individual intends to bring suit in the public interest against the Alleged Violators sixty (60) days hereafter to correct the violations caused by their failure to warn of exposures to the listed chemicals, formaldehyde (gas) and acetaldehyde PRIOR to that exposure.

Noticing Individual: This Notice is provided by Linda Kincaid MPH, CIH, who is a California resident and who has an interest in protecting California Residents from health hazards posed by formaldehyde (gas) and acetaldehyde. Ms. Kincaid's address and telephone number are: 20255 Glasgow Drive Saratoga CA 95070 (408) 998-4642.

Respectfully,



Linda Kincaid, MPH, CIH

Enclosures: PROPOSITION 65: A SUMMARY
Certificate of Merit
Certificate of Service
Attachment to Proof of Service

CERTIFICATE OF MERIT

I, Linda Kincaid, 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 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 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.

Dated: August 24, 2009

Linda Kincaid

Linda Kincaid, MPH, CIH

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of Santa Clara County. I am over the age of 18 and not a party to this case.

I served the following:

- 1) Sixty Day Notice of Intent to Sue;
- 2) "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"
- 3) Certificate of Merit
- 4) Certificate of Service
- 5) Supporting Documents – California Attorney General Only

by placing a true copy thereof enclosed in a sealed envelope with First Class postage thereon fully prepaid, in a United States Post Office mail box in Mountain View, California to the parties whose name and address are shown on the service list attached hereto

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

Executed on August 24, 2009 in Mountain View, California.

By: _____

Cathy Roberts
Cathy Roberts

Service List of alledge violators

PAUL L. HULME	ALAIN PINEL REALTORS INC	12772 SARATOGA SUNNYVALE #1000	SARATOGA, CA 95070
JAMES H. NIVEN	APR REAL ESTATE SERVICES INC	425 CALIFORNIA ST 15TH FLOOR	SAN FRANCISCO, CA 94104
LAWYERS INCORPORATING SERVICES	VALLEY OF CALIFORNIA INC	2730 GATEWAY OAKS DR #100	SACRAMENTO, CA 95833
EDWARD VERNON ZIMBRICK	ALPHA FACTORS	5504 MONTEREY ROAD	SAN JOSE, CA 95138
MOISE NAHOURLI	Z & M ASSOCIATES INC	1601 S DE ANZA BLVD #150	CUPERTINO, CA 95014
MARIA CLAVS	PROFETA CONSULTING SERVICES INC	501 VINEYARD TOWN CENTER	MORGAN HILL, CA 95037
LEEANN MARCELLA HOGGE	LOIS GARNER REALTY INC	5183 FERNRIDGE CIRCLE	DISCOVERY BAY, CA 94501
STANLEY CHEN	HAPPY REAL ESTATE INC	958 EDMONDS WAY	SUNNYVALE, CA 94087
WAHIB COSTANDI	ACTON REALTY INC	298 S SUNNYVALE AVE #102	SUNNYVALE, CA 94086
CATHE P'YAN	HESSLING AND PIPER INC	2753 HAGEMAN CT	SAN JOSE, CA 95125
ROBERT W SEARS	ROBERT W. SEARS CORPORATION	841 BLOSSOM HILL RD #112	SAN JOSE, CA 95123
BRUCE E. MARTIN	SUNMAR CORPORATION	761 E EL CAMINO REAL	SUNNYVALE, CA 94087
GARY CAMPI	CAMPI PROPERTIES INC	195 S. SAN ANTONIO RD.	LOS ALTOS, CA 94022
RONALD RICHARD RAMIREZ	RFP REALTY INC	2233 DIANNE DRIVE	SANTA CLARA, CA 95051
JERRY L. HILL	JLH FINANCIAL SERVICES INC	1530 PARKMOOR AVE #B	SAN JOSE, CA 95128
JUDITH A. PROFETA	RHESUS INC	JUNIPERO BETWEEN 5TH & 6TH	CARMEL, CA 93921
MARGUERITE NOGOSEK	MARGUERITE NOGOSEK INC	1715 S. BASCOM AVE. SUITE 100	CAMPBELL, CA 95008
MONG-YU DENG	PHOENIX REAL ESTATE INVESTMENT CORP	1119 CASUAL WAY	SAN JOSE, CA 95120
KAMRAN CHITGAR	ICON HOME LOANS INC.	1630 E. CAPITOL EXPRESSWAY	SAN JOSE, CA 95121
NET CORPORATION SYSTEM	INTERO REAL ESTATE SERVICES INC	818 WEST SEVENTH ST	LOS ANGELES, CA 90017
ROGER D WINTLE	BEACH DOG INVESTMENTS INC	10 ALMADEN BLVD #1220	SAN JOSE, CA 95113
SERENA Y LIAC	CHOICE PROPERTIES INC	595 EASTER AVENUE	MILPITAS, CA 95035
JUDY WANG	JUDY WANG REALTORS INC	1221 E. CALAVERAS BLVD.	MILPITAS, CA 95035
MARGARET VIERRA	WATER WHEEL ENTERPRISES INC	18455 TECHNOLOGY DRIVE	MORGAN HILL, CA 95037
P B JOSHIPURA	M & S REALTY INC.	1314 LINCOLN AVE #1B	SAN JOSE, CA 95125
LEGALZOOM.COM, INC.	VALENCE CORPORATION	7083 HOLLYWOOD BLVD #180	LOS ANGELES, CA 90028
TAM QUACH	TUSCANY REALTY INC	1451 MCCARTHY BLVD	MILPITAS, CA 95035
JUDITH BROOKS	TREE ROCK INC	2920 WOODSIDE ROAD	WOODSIDE, CA 94062
MICHAEL SIBILIA	SILICON VALLEY REAL ESTATE GROUP II INC	2542 SOUTH BASCOM AVE #100	CAMPBELL, CA 95008
TONY DINH	NOVIA REALTY & FINANCIAL INC	3111 MC LAUGHLIN	SAN JOSE, CA 95121
CHENGXIN LIU	RESULT FINANCIAL CORP.	1754 TECHNOLOGY DR #122 F	SAN JOSE, CA 95110
SHUWU SONG	GOOGAIN INC	3371 COLONNA AVE	SAN JOSE, CA 95148
ROGER D WINTLE	PACIFIC WEST LOANS INC	99 ALMADEN BLVD #710	SAN JOSE, CA 95113
KEVIN NGUYEN	SELECTIVE MORTGAGE & PROPERTY INC.	4217 CHABOYA HILLS CT	SAN JOSE, CA 95148
ANNE KING	SILICON VALLEY REAL ESTATE CORP	505 HAMILTON AVE #100	PALO ALTO, CA 94301
HUAN PHAM	WONDERAGENTS GROUP INC	1075 E. BROKAW RD	SAN JOSE, CA 95131
CHRIS TRAPANI	SERENO PROPERTIES	214 LOS GATOS-SARATOGA ROAD	LOS GATOS, CA 95032
DEONNE ESSARY	CONDO TO CASTLE PROPERTIES INC	2250 DIANA AVE	MORGAN HILL, CA 95037
JAN LIU	BAY REALTY GROUP INC.	20065 STEVENS CREEK BLVD #1C	CUPERTINO, CA 95014
SERVIZ GUARD	WEPRO REAL ESTATE SERVICES INC	2023 MANDELAY PLACE	SAN JOSE, CA 95138
HAOMING QIU	BAYHOME FINANCIAL CORPORATION	20380 TOWN CENTER LN #170	CUPERTINO, CA 95014
VYNONA DENISE MORRIS	MORRIS INVESTMENT ASSOCIATES INC	3083 THURMAN DRIVE	SAN JOSE, CA 95148
LEGALZOOM.COM, INC.	THE REAL GAGE MARKETING INC	7083 HOLLYWOOD BLVD #180	LOS ANGELES, CA 90028
HANH TRINH	WINGATE REAL ESTATE & INVESTMENT INC	821 STRICKROTH DRIVE	MILPITAS, CA 95035
ROBERT ALDANA	HOME RESOLUTION & CREDIT SERVICES INC	2110 STORY RD #201	SAN JOSE, CA 95122
SENG-CHI CHEN	BAY REALTY GLOBAL INC	1054 S DE ANZA BLVD #103	SAN JOSE, CA 95129
Stewart, Robert Morris	Broker of Record	2698 BERRYESSA RD	SAN JOSE, CA 95132
ato, Gerald Shigeru	Broker of Record	2833 JUNCTION AVE STE 200	SAN JOSE, CA 95134
ains, Rajbinder Singh	Broker of Record	1323 JACKLIN RD	MILPITAS, CA 95035
hae, Michael S	Broker of Record	3334 EL CAMINO REAL	SANTA CLARA, CA 95051
u, Sun Y Jen	Broker of Record	12175 C SARATOGA-SUNNYVALE RD	SARATOGA, CA 95070
o, Tai-Ping	Broker of Record	20570 PROSPECT RD	SARATOGA, CA 95070
ancias, Julian Avila	Broker of Record	18985 MALAGUERRA AVE	MORGAN HILL, CA 95037
ang, Davis Yuhong	Broker of Record	1153 BORDEAUX DR STE 107	SUNNYVALE, CA 94089
ang, Bc	Broker of Record	1021 S WOLFE ROAD #105	SUNNYVALE, CA 94086
Office of Proposition 65 Enforcement	California Attorney General	P.O. Box 70550	Oakland, CA 94612
Colores Carr	District Attorney	70 W. Hedding Street	San Jose, CA 95110
Guiguel Marquez	County Counsel	70 West Hedding Street,	San Jose, CA 95110
Richard Doyle	City Attorney	200 East Santa Clara Street	San Jose, CA 95113
William R. Seligmann	City Attorney	70 N. First Street	Campbell, CA 95008
Carol Koracz	City Attorney	10300 Torre Avenue	Cupertino, CA 95014
inda Callon	City Attorney	7351 Rosanna Street	Gilroy
ichael J. Dqaz	City Attorney	455 East Calaveras Boulevard	Milpitas, CA 95035
enny Wan	City Attorney	17555 Peak Ave.	Morgan Hill, CA 95037
ichael D. Martello	City Attorney	500 Castro Street	Mountain View, CA 94039
ary Baur	City Attorney	250 Hamilton Avenue,	Palo Alto, CA 94301
erene Leichte	City Attorney	1500 Warburton Ave	Santa Clara, CA 95050
avid E. K. Ine	City Attorney	P.O. Box 3707	Sunnyvale, CA 94088
ort	Town Attorney	110 E. Main Street	Los Gatos, CA 95030

Courtesy Copy to parties of interest via email in PDF format

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