*VIA U.S. MAIL*

Mr. Randal Kleis
Owner or Current
Owner/President/CEO
MacArthur Care Center/ Oakgrove
Springs Care Center
309 Macarthur Blvd.
Oakland, CA 94610

and the public prosecutors listed on
the attached certificate of service

December 30, 2009

RE: 60-DAY NOTICE OF INTENT TO SUE UNDER HEALTH & SAFETY CODE SECTION 25249.6

**Consumer Advocacy Group, Inc. ("CAG"), the noticing entity, located at 9903 Santa Monica Boulevard #225, Beverly Hills, California 90212, serves this Notice of Violation ("Notice") upon MacArthur Care Center/ Oakgrove Springs Care Center ("Violator")** pursuant to and in compliance with *The Safe Drinking Water and Toxic Enforcement Act* (commencing with Cal. Health & Safety Code § 25249.5) and addressed under California Code of Regulations, title 27, section 25601, *et seq.*, also known as Proposition 65. This letter constitutes notification that CAG believes and alleges that Proposition 65 has been and is continually violated by **Violator** during the time period referenced below.

**Violator** may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi, 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010, telephone no. 213-382-3183, facsimile no. 213-382-3430. This Notice satisfies a prerequisite for CAG to commence an action against **Violator** in the Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred in each California county reflected in the district attorney addresses listed in the attached certificate of service. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

CAG is a registered corporation based in California. CAG is a nonprofit entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65. This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o 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 . . ." (Cal. Health & Safety Code § 25249.6.)

This notice concerns exposures to Second-Hand Tobacco Smoke and Environmental Tobacco Smoke occurring on but not beyond the property owned or controlled by **Violator**. Second-Hand Tobacco Smoke and Environmental Tobacco Smoke contain Tobacco Smoke, a chemical known to the State of California to cause Cancer. Second-Hand Tobacco Smoke and Environmental Tobacco Smoke also contains the following list of chemicals known to the State to cause Cancer and/or Reproductive Toxicity ("Constituent Chemicals"):

**TOBACCO SMOKE** **CARCINOGENS**

| | | | |
|---|---|---|---|
| (4-Aminodiphenyl) | Arsenic (inorganic arsenic compounds) | Dibenz[a,h]anthracene | N-Nitrosodiethylamine |
| 1, 1 -Dimethylhydrazine (UDMH) | Benz[a]anthracene | Dibenz[a,j]acridine | N-Nitrosodi-n-butylamine |
| 1,3-Butadiene | Benzene | Dibenzo[a,e]pyrene | N-Nitrosomethylethylamine |
| 1-Naphthylamine | Benzo[a]pyrene | Dibenzo[a,h]pyrene | N-Nitrosomorpholine |

| | | | |
|---|---|---|---|
| 2-Naphthylamine | Benzo[b]fluoranthene | Dibenzo[a,i]pyrene | N-Nitrosononicotine |
| 2-Nitropropane | Benzo[j]fluoranthene | Dibenzo[a,l]pyrene | N-Nitrosopiperidine |
| 4-Aminobiphenyl | Benzo[k]fluoranthene | Dichlorodiphenyltrichloroethane (DDT) | N-Nitrosopyrrolidine |
| 7H-Dibenzo[c,g]carbazole | Cadmium | Formaldehyde (gas) | Ortho-Anisidine |
| Acetaldehyde | Captan | Hydrazine | Ortho-Toluidine |
| Acetamide | Chromium (hexavalent compounds) | Lead and lead compounds | Urethane (Ethyl carbamate) |
| Acrylonitrile | Chrysene | Nickel and certain nickel compounds | |
| Aniline | Dibenz[a,h]acridine | N-Nitrosodiethanolamine | |

## REPRODUCTIVE TOXINS

| | | | |
|---|---|---|---|
| Arsenic (inorganic Oxides) | Carbon monoxide | Nicotine | Urethane |
| Cadmium | Lead | Toluene | |
| Carbon disulfide | | | |

This Notice addresses Environmental Exposures. An "'[e]nvironmental exposure' is an exposure that may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air, indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or natural substances, either through inhalation, ingestion, skin contact, or otherwise. Environmental exposures include all exposures that are not consumer products exposures, or occupational exposures." (Cal. Code Regs. tit. 27, § 25602(c).)

This Notice also addresses Occupational Exposures. An "[o]ccupational exposure" is an "exposure to any employee in his or her employer's workplace." (Cal. Code Regs. tit. 27, § 25602(f).)

***This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health.*** The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a) the conduct of manufacturers occurring outside the State of California; and (b) employers with less than 10 employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

Violator has exposed, knowingly and intentionally, persons to Second-Hand Tobacco Smoke and Environmental Tobacco Smoke, which contain Tobacco Smoke and the Constituent Chemicals listed above, without first making a clear and reasonable warning available to the exposed persons prior to such exposures, in violation of Proposition 65. Violator has caused the exposures to the carcinogens and reproductive toxins listed above without providing clear and reasonable warnings of such so that persons would be aware that if they entered the nursing home facility owned, managed and/or operated by **Violator** at the address(es) described below, they would likely be exposed to Tobacco Smoke and one or more of the Constituent Chemicals listed above. As to both Environmental and Occupational Exposures, Violator failed to provide adequate warnings.

The location of the exposures occurred on but not beyond the property owned or controlled by the alleged Violator. The *sources* of exposures are Second-Hand Tobacco Smoke and Environmental Tobacco Smoke, which includes Tobacco Smoke and its Constituent Chemicals listed above. The locations of exposures were at the areas under the Violator's ownership, management, and/or control that are designated by **Violator** as smoking areas. The locations of exposures are also at the areas under the **Violator's** ownership, management, and/or control that are immediately adjacent to the areas designated by **Violator** as smoking areas, including, but not limited to, indoor areas where Second-Hand Tobacco Smoke and Environmental Tobacco Smoke may permeate, travel, and or migrate through entry paths such as open doors and windows.

**Violator** allows individuals to smoke cigarettes and other tobacco products at designated areas within its facility,

thereby exposing residents, including, but not limited to, the elderly and dependent adults, members of the public, visitors, and vendors (referring to Environmental Exposure) and **Violator's** employees, including, but not limited to, pregnant nurses (referring to Occupational Exposure) to the Tobacco Smoke and Constituent Chemicals found in Second-Hand Tobacco Smoke and Environmental Tobacco Smoke. **Violator** has exclusive control over the relevant designated smoking areas, as these areas constitute a portion of the property **Violator** owns or leases for use as a nursing facility. (Therefore, **Violator** possesses sufficient control over the relevant designated smoking areas to prohibit or allow smoking or to post Proposition 65-compliant warnings. Furthermore, Violator possesses sufficient control over the relevant designated smoking areas to control the quality of ambient air and indoor air where applicable entering not only the relevant designated smoking areas but also the rooms, hallways, lobbies and other areas immediately adjacent to the designated smoking areas.)

**Violator** permits persons to smoke tobacco in these designated smoking areas and often facilitates the smoking of tobacco by providing ashtrays, smoking signs, and employee supervision for the convenience and safety of those persons who smoke at these areas. When persons, including, but not limited to, residents, visitors and employees of **Violator's** facility, loiter in, walk through, or traverse zones in and adjacent to these designated smoking areas, they suffer exposure to the Tobacco Smoke and Constituent Chemicals present in the ambient air and indoor air, where applicable.

Employees suffer additional exposures when they supervise the residents who engage in smoking, assist them in lighting their cigarettes and other tobacco products, assist them in putting out their cigarettes and other tobacco products, empty ashtrays or otherwise clean or service the relevant designated smoking areas. Employees also suffer exposures when they visit or tend to residents in areas immediately adjacent to the areas designated by Violator for smoking, including, but not limited to, tending to residents in rooms or areas where Second-Hand Tobacco Smoke and Environmental Tobacco Smoke may enter through entry paths such as open windows or doors, or by walking through rooms and or hallways that are immediately adjacent to the areas designated by Violator for smoking, that allow the entry, permeation, travel, and migration of Second-Hand Tobacco Smoke and Environmental Tobacco Smoke originating in designated smoking areas. Because of the foregoing, employees of **Violator** suffered exposures of significant duration on a regular basis, without receiving any clear and reasonable warnings required by Proposition 65.

The violations of Proposition 65 addressed through this notice occurred at the following times:

PERIOD OF VIOLATION

From: December 23, 2006 Through December 23, 2009 And continuing thereafter.

The primary route of exposure for both Environmental and Occupational Exposures is inhalation caused when affected persons breathe in the ambient air and indoor air, where applicable, containing Second-Hand Tobacco Smoke or Environmental Tobacco Smoke, causing exposure of Tobacco Smoke and its Constituent Chemicals to the mouth, throat, bronchi, esophagi, and lungs. Exposure of Tobacco Smoke and its Constituent Chemicals generates risks of cancer and reproductive toxicity to the affected persons. Employees also suffer a route of exposure through dermal contact when they assist residents in lighting their cigarettes and other tobacco products, assist residents in putting out their cigarettes and other tobacco products, empty ashtrays or otherwise clean or service the relevant designated smoking areas and thus their skin comes into contact with Tobacco Smoke and its Constituent Chemicals.

## OCCUPATIONAL EXPOSURES

While in the course of doing business, each and every day, at the following geographical location:

***309 MacArthur Blvd., Oakland, CA 94610***

during the time period referenced above, the **Violator** has been and is *knowingly and intentionally* exposing its employees to ***Tobacco Smoke and the Constituent Chemicals listed above***, *without first giving clear and reasonable warning* of that fact to the exposed employees. (Cal. Health & Safety Code § 25249.6).

Specifically, the exposure to certain employees (such as those employees described below) took place in the

following areas: in areas designated by the **Violator** for smoking; in the lobbies, hallways, rooms, indoor/outdoor corridors, and other areas that are immediately adjacent to or nearby the areas designated for smoking and are geographically located at *the location of the Violator's Nursing Home Facility described above.*

The ***employees exposed*** to ***Tobacco Smoke and the Constituent Chemicals listed above*** at **Violator's** nursing home facility include, but are not limited to, the employees engaged in the following ***occupations and tasks:***

- **Certain employees entering the *areas designated for smoking,* where smoking has been or is occurring by smokers:**
  Such employees include, but are not limited to: (1) Nurses, nurses aides, and/or other employees whose designated duty is to supervise residents of **Violator's** nursing home facility who engage in smoking activities in the areas designated for smoking; (2) Nurses, nurses aides, and/or other employees whose designated duty is to assist the residents who smoke in lighting and/or putting out their cigarettes and other tobacco products; (3) Nurses, nurses aides, and/or other employees who enter the areas designated for smoking in order to take care of, feed, or otherwise tend to those residents engaged in smoking; (4) **Violators'** cleaning personnel, janitorial staff and repair/maintenance personnel, who enter the areas designated for smoking to clean such areas, including, but not limited to, the ashtrays in such areas, during or immediately after smoking has taken place in such areas; (4) any employees, regardless of the employees' occupation and job task, who have been and are entering or passing through the areas designated by **Violator** for smoking in furtherance of their employment responsibilities.

The ***employees exposed*** to ***Tobacco Smoke and the Constituent Chemicals listed above*** at **Violator's** nursing home facility also include, but are not limited to, the employees engaged in the following ***occupations and tasks:***

- **Certain employees entering or passing through resident's rooms or other rooms, lobbies, hallways, corridors, and other areas where such areas are affected by smoke that permeates, migrates, and travels from nearby or adjacent areas designated for smoking:**
  Such employees include, but are not limited to: (1) reasonably foreseeable employees (*see* description of occupations and tasks mentioned above), who pass through or enter resident's rooms, dining rooms, lobbies, hallways, and corridors (that are nearby or adjacent to the areas designated for smoking), and where such areas are affected by the ***Tobacco Smoke and Constituent Chemicals listed above*** (that originates from areas designated for smoking) which enters, permeates, migrates, and travels through the openings of doors and windows and other openings, structural or otherwise, of the areas designated for smoking into the said rooms, lobbies, hallways, and corridors.

In the above-mentioned location and areas designated for smoking by the **Violator**, smoking has been and is occurring by smokers in the designated areas and at any other areas inside or immediately adjacent to Violator's nursing home facility where smoking is allowed to occur. As such, certain employees described above have been and are being exposed to ***Tobacco Smoke and the Constituent Chemicals listed above*** resulting from smoking that has been or is occurring at the **Violator's** premises, in the manner elaborated above.

## ENVIRONMENTAL EXPOSURES

While in the course of doing business, each and every day, at the following geographical location(s):

***309 MacArthur Blvd., Oakland, CA 94610***

during the time period referenced above, the **Violator** has been and is *knowingly and intentionally* exposing certain persons and the public (*see* detailed description below) to ***Tobacco Smoke and its Constituent Chemicals*** and byproducts, as listed below and designated by the State of California to cause **cancer and reproductive toxicity,** pursuant to California Code of Regulations, title 27, section 27001, *without first giving clear and reasonable warning* of that fact to such persons and the public. (Cal. Health & Safety Code Section 25249.6).

The *source* of exposure includes ***Tobacco Smoke and its Constituent Chemicals*** and byproducts as listed above at the geographic location of the Violator's nursing home facility, as described above. Specifically, the exposure

to certain persons including, but not limited to, the **Violator**'s residents and patients, as well as treating physicians, pharmacists, state inspectors, and visitors (including, but not limited to, family members and friends of the residents at **Violator's** nursing home facility, as well as those persons visiting the facility to determine whether it is a viable nursing home to place their family and loved ones), and other business-related invitees took place in the following areas: in areas designated for smoking; in the lobbies, patios, hallways, rooms and indoor/outdoor corridors that are adjacent or nearby or on the floors where areas designated for smoking (hereinafter, "areas designated for smoking" or its equivalent refers to areas where smoking has been permitted by the violators) are geographically located at the geographic location of the Violator's nursing home facility, as described above. The ***persons exposed*** to the said chemicals at the said location(s) include, but are not limited to, the following reasonably foreseeable persons:

- **Certain persons entering *areas designated for smoking,* where smoking has been or is occurring by smokers:**
  Those persons who enter the above mentioned areas include, but are not limited to, any reasonably foreseeable persons who have been and are being exposed to ***Tobacco Smoke and its Constituent Chemicals as listed above*** by entering or passing through the said areas. Such persons who enter the above-referenced areas may include, but are not limited to, the **Violator**'s residents and patients, as well as treating physicians, pharmacists, state inspectors, and visitors (including, but not limited to, family members and friends of the residents at **Violator's** nursing home facility, as well as those persons visiting the facility to determine whether it is a viable nursing home to place their family and loved ones) and delivery persons (who are not affiliated with the **Violator** but are providing a service to the **Violator**, residents or visitors of the residents at the areas within the **Violator's** premise), and other business-related invitees. Furthermore, and more specifically, the following persons have been and are being exposed to ***Tobacco Smoke and its Constituent Chemicals listed above*** in the above referenced areas: (1) the **Violator**'s residents who traverse or use the areas designated for smoking or who enter or reside in rooms adjacent to areas designated for smoking, (2) residents' visitors and companions (including, but not limited to, children, pregnant women, etc.) who enter or pass through the areas designated for smoking, (3) and other reasonably foreseeable persons entering or passing through such areas designated for smoking (*e.g.*, state inspectors, attending physicians, and delivery and service persons that are not affiliated with the **Violator**), where such persons have been and are entering such an area while smoking has been or is occurring.

- **Certain persons entering or passing through rooms, lobbies, hallways, and corridors, where such areas are affected by smoke that permeates, migrates, and travels from nearby or adjacent areas that are designated for smoking:**
  Such persons include, but are not limited to: reasonably foreseeable persons, *i.e.*, residents and patients, as well as treating physicians, pharmacists, state inspectors, and visitors (including, but not limited to, family members and friends of the residents at **Violator's** nursing home facility, as well as those persons visiting the facility to determine whether it is a viable nursing home to place their family and loved ones) and delivery persons (who are not affiliated with the **Violator** but are providing a service to the **Violator,** residents or visitors of the residents at the areas within the **Violator's** premise), and other business-related invitees, who pass through or enter lobbies, hallways, and corridors (that are nearby or adjacent to or on the floor(s) where areas designated for smoking are located), and where such areas are affected by the ***Tobacco Smoke and its Constituent Chemicals as listed above*** (that originates from areas designated for smoking) which enters, permeates, migrates, and travels through the openings of doors and windows and through other openings, structural or otherwise, of the areas designated for smoking into the said rooms, lobbies, hallways, and corridors.

In the above-mentioned geographic location and areas designated for smoking by the **Violator** within that geographic location, smoking has been and is occurring by residents who smoke, either while supervised by **Violator's** employees or while left unattended. As such, certain persons described above have been and are being exposed to ***Tobacco Smoke and its Constituent Chemicals*** resulting from smoking that has been or is occurring at the **Violator's** premises, in the manner elaborated above. Therefore, the **Violator** has been and is unlawfully exposing the above-mentioned exposed persons to ***Tobacco Smoke and its Constituent Chemicals*** and byproducts as listed below and designated by the State of California to cause **cancer and reproductive toxicity**, pursuant to California Code of Regulations, title 27, section 27001, and in doing so, the **Violator** *failed to first*

*give clear and reasonable warning* of that fact to the exposed persons described above. (Cal. Health & Safety Code § 25249.6).

The *route* of exposure for Environmental Exposures to the chemicals listed below, by the exposed persons described above, have been and are from ***Tobacco Smoke and its Constituent Chemicals*** (in the smoke designated areas and affected areas as describe-above) through inhalation, meaning that ***Tobacco Smoke and its Constituent Chemicals*** have been and are being breathed in via the ambient air and indoor air, where applicable, by the exposed persons causing inhalation contact with their mouths, throats, bronchi, esophagi, and lungs. The exposure of ***Tobacco Smoke and its Constituent Chemicals*** as listed below to the mouths, throats, bronchi, esophagi, and lungs predictably generate risks of **cancer and reproductive toxicity** to the exposed persons described above.

Proposition 65 (Cal. Health & Safety Code Section 25249.7) requires that notice and intent to sue be given to the **Violator** at least sixty (60) days before the suit is filed. With this letter, ***Consumer Advocacy Group, Inc.*** gives notice of the alleged violations to the **Violator** and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) days of the sending of this notice (plus five (5) calendar days because the place of address is within the State of California, or plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), ***Consumer Advocacy Group, Inc.*** may file suit. With the copy of this notice submitted to the violators, a copy of the following is attached: *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.*

**Note: *Consumer Advocacy Group, Inc.*, in the interest of the public, is determined to resolve this matter in a manner beneficial to all parties involved, and in particular to the elderly and frail residents in Violator's nursing home who do not smoke but are nevertheless exposed to Second-Hand Tobacco Smoke and Environmental Tobacco Smoke, and the employees who are assigned with the task of supervising smokers. In order to encourage the expeditious and proper resolution of this matter in the interests of the public, *Consumer Advocacy Group, Inc.* is prepared to forego a portion of its monetary recovery, including penalties, restitution, and/or attorneys' fees in the event that the Violator immediately adopts a comprehensive "smoke-free" policy at its facilities and takes reasonable and necessary steps to adequately enforce this policy so as to prevent or significantly reduce future exposures of the type identified in this Notice. *Consumer Advocacy Group, Inc.* remains open to resolving its grievances in the public interest short of formal litigation, and in the absence of a comprehensive "smoke-free" policy, CAG may still consider foregoing a portion of its recovery in exchange for other immediate measures taken to prevent or significantly reduce future exposures of the types described in this Notice; however, the more protective the steps taken by Violator, the more CAG will be willing to forego portions of its monetary recovery.**

Dated: December 30, 2009

By: _____

REUBEN YEROUSHALMI
Attorney for
***Consumer Advocacy Group, Inc.***

## Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACTION 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 25000 through 27001.

### 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 chemicals have been listed 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:(l) 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.

***Discharge 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 list 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.

## CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party.

3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is 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: December 30, 2009

By: REUBEN YEROUSHALMI

## CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010.

I SERVED THE FOLLOWING:

1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
2) Exhibit A: List of Alleged Violators' Names and Locations
3) Certificate of Merit: Health and Safety Code Section 25249.7(d)
4) Certificate of Merit: Health and Safety Code Section 25249.7(d) *Attorney General Copy* (*only sent to Attorney General's Office*)
5) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.

Date of Mailing: _____ Place of Mailing: Los Angeles, CA

**NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:**

∇
Alleged Violators

| | | |
|---|---|---|
| Mr. Randal Kleis<br>Owner or Current<br>Owner/President/CEO<br>MacArthur Care Center/<br>Oakgrove Springs Care Center<br>309 Macarthur Blvd.<br>Oakland, CA 94610 | | |

∇
Government Agencies

| | | |
|---|---|---|
| Office of the Attorney General<br>P.O. BOX 70550<br>Oakland, CA 94612-0550 | Alameda County District Attorney<br>1225 Fallon St, Room 900<br>Oakland, CA 94612 | |

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

Dated: 12/31/2009

By: _____
Moosa Saidian