Sixty-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (*Cal. Health & Safety Code* § 25249.5, *et seq.*) ("Proposition 65")

January 24, 2011

James Chaeyu Rho, President or
Current President/ CEO
JRK & Associates
37050 47th Street East,
Palmdale, CA 93552

James Chaeyu Rho, President or
Current President/ CEO
J.R. Restaurants, Inc.
1017 West Avenue I
Lancaster, CA 93534

James Chaeyu Rho, President or
Current President/ CEO
JRK & Associates, Inc.
18214 Chatham Ln.
Porter Ranch, CA 91326

James Chaeyu Rho, President or
Current President/ CEO
J.R. Restaurants, Inc.
18214 Chatham Ln.
Porter Ranch, CA 91326

James Chaeyu Rho, President or
Current President/ CEO
E.J. Restaurants, Inc.
3750 Wilshire Blvd.
Los Angeles, CA 90010

James Chaeyu Rho, President or
Current President/ CEO
E.J. Restaurants, Inc.
18214 Chatham Ln.
Porter Ranch, CA 91326

Dear Mr. Rho, and to whom else this shall concern:

Consumer Advocacy Group, Inc. ("CAG"), the noticing entity, serves this Notice of Violation ("Notice") upon JRK & Associates dba "Denny's", J.R. Restaurants, Inc. dba "Denny's" and EJ Restaurants, Inc., dba "Denny's", (hereinafter referred to as "Violator"), pursuant to and in compliance with Proposition 65. Violator may contact CAG concerning this Notice through its attorney, Ben Yeroushalmi, Esq., 9100 Wilshire Boulevard, Suite 610 E, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violator in 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 an organization 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.

Second-hand tobacco smoke or environmental tobacco contain Tobacco Smoke, chemical known to the State to cause Cancer. Tobacco Smoke also contains the following chemicals known to the State to

cause Cancer or Reproductive Toxicity (collectively "Constituent Chemicals"):

| | | | |
|---|---|---|---|
| Carbon disulfide | 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 (4-amino-diphenyl) | 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 | Carbon monoxide |
| Aniline | Dibenz[a,h]acridine | N-Nitrosodiethanolamine | Nicotine |
| Urethane | Lead | Toluene | |

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 which are not consumer products exposures, or occupational exposures." *Cal. Code Regs.* 27 § 25602(c).

This Notice also addresses Occupational Exposures. An "'[o]ccupational exposure' means an exposure to any employee in his or her employer's workplace." *Cal. Code Regs.* 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 then (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 or environmental tobacco smoke, which contains Tobacco Smoke and Constituent Chemicals, without first providing a clear and reasonable warning to affected persons prior to these exposures in violation of Proposition 65.

As to both environmental and occupational exposures, Violator failed to provide adequate warnings.

The locations of exposure occurred on but not beyond the property owned or controlled by the alleged Violator.

The affected employees of Violator held various occupations, including assistant store managers (who, through passionate leadership, oversee the staff and daily operations at the **Denny's** locations listed below), cash register operators, and kitchen employees (who effectively satisfy each customer's needs with a superior level of product knowledge, presentations, quality, speed of service, customer relations, and teamwork), and shift supervisors including but not limited to each of the following locations:

1. "Denny's ," 3750 Wilshire Blvd., Los Angeles, CA 90010
2. "Denny's." 1017 W. Avenue I, Lancaster, CA 93534
3. "Denny's." 37050 Palmdale, CA 93552

The sources of exposures are numerous. The locations where exposures occurred and continue to occur at each **Denny's** restaurant, including but not limited to the **Denny's** store listed above, that has an outdoor seating area adjacent to the store or other designated smoking area wherein the smoking of tobacco is not expressly prohibited and which does not contain conspicuously posted "no smoking" signs. Violator designates certain areas for the smoking of tobacco products at each of the locations mentioned above, and allow individuals to smoke cigarettes and other tobacco products at these locations, thereby exposing customers, members of the public, visitors, and vendors (in the case of environmental exposure) and Violator's employees (in the case of occupational exposure) to the Tobacco Smoke and Constituent Chemicals found in second-hand tobacco smoke or environmental tobacco smoke. Violator has exclusive control over the relevant outdoor seating areas, as these areas constitute a portion of the property Violator owns or leases for use as a retail store. Therefore, Violator possesses sufficient control over the relevant outdoor seating areas to prohibit or allow smoking or to post Proposition 65-complaint warnings. Furthermore, Violator possesses sufficient control over the relevant outdoor seating areas to control the quality of ambient air entering the relevant outdoor seating areas and adjacent stores. Violator permits persons to smoke tobacco in these designated outdoor seating areas at the retail stores. When persons, including customers and employees of Violator, loiter in, walk through, or traverse zones in and adjacent to these outdoor seating areas, they are exposed to the Tobacco Smoke and Constituent Chemicals present in the ambient air. CAG's investigations show that infants and pregnant women are at times among the affected persons. Persons, including Violator's employees, are also exposed when entrance doors to **Denny's** stores are open and Tobacco Smoke and the Constituent Chemicals enter the stores, the indoor premises of which are otherwise non-smoking areas. Violator's employees suffer additional exposures when they clean debris and waste related to the smoking of tobacco products or otherwise clean or service the relevant outdoor seating areas where smoking is allowed. Because of the foregoing, Violator's employees suffered exposures of significant duration on a regular basis, without receiving warnings.

The primary route of exposure for the violations is inhalation contact caused when affected persons breathe in the ambient air 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.

These violations occurred each day between October 04, 2007 and October 04, 2010.

Proposition 65 requires that notice and intent to sue be given to the violator(s) at least sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 252549.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because a place of address is outside the State of California but within the United States), CAG may file suit. *See Cal. Health & Safety Code* § 25249.7(d)(1); *Cal. Code Regs.* 27 § 25903(d)(1); and *Cal. Code Civ. Proc.* § 1013.

This notice covers all violations of Proposition 65 currently known to Consumer Advocacy Group, Inc. from information now available to it. With the copy of this notice submitted to Violator, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary. CAG is ready and willing to discuss the possibility of resolving its grievances in the public interest short of formal litigation.

Dated: 1/24/11

YEROUSHALMI & ASSOCIATES

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 27 of the California Code of Regulations, Sections 25000 through 27000.

## 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 27, California Code of Regulations, Section 25903). 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.

## §27000. Chemicals Required by State or Federal Law to Have been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.8)c)].

Readers should note a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation.
The Birth Defect Prevention Act of 1984(SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the United Stated Environmental Protections Agency (U.S. EPA). The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific, additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the non-200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

[Final Paragraph and List Ommitted].

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

**Re: Second-hand tobacco smoke / Environmental tobacco smoke exposures**
**Occurring at**
**Denny's, 3750 Wilshire Blvd., Los Angeles, CA 90010**
**Denny's, 1017 W. Avenue I, Lancaster, CA 93534**
**Denny's, 37050 Palmdale, CA 93552**

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: 1/24/11

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 9100 Wilshire Blvd., Ste. 610 E, Beverly Hills, CA 90212

On the date below, I SERVED THE FOLLOWING:

1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
4) 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.

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

By: _____

**Joannie Yoon**

Date of Mailing: 02-02-2011 Place of Mailing: Beverly Hills, CA

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

▽

**Violator**

James Chaeyu Rho, President or
Current President/ CEO
JRK & Associates
37050 47th Street East,
Palmdale, CA 93552

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18214 Chatham Ln.
Porter Ranch, CA 91326

## Public Prosecutors

| | |
|---|---|
| Los Angeles County District Attorney<br>210 W Temple St, 18th Floor<br>Los Angeles, CA 90012 | Office of the Attorney General<br>P.O. Box 70550<br>Oakland, CA 94612-0550 |
| Los Angeles City Attorney<br>200 N Main St Ste 1800<br>Los Angeles CA 90012 | |