60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

DATE: August 16, 2012

TO: Niki Leondakis, President – Kimpton Hotel & Restaurant Group, LLC
California Attorney General's Office;
District Attorney's Office for 58 Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

FROM: Dr. Whitney R. Leeman

I. INTRODUCTION

My name is Whitney R. Leeman. I hold a Doctor of Philosophy degree in Environmental Engineering. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"). As noted above, notice is also being provided to the alleged violator, Kimpton Hotel & Restaurant Group, LLC (the "Violator"). The violations covered by this Notice consist of the product exposures, routes of exposure, and types of harm potentially resulting from exposure to the toxic chemicals ("listed chemicals") identified below, as follows:

Listed Chemicals	*Routes of Exposure*	*Types of Harm*	*Product Exposures*
Benz[a]anthracene	Ingestion	Cancer	See Section VII. Exhibit A
Benzo[a]pyrene	Ingestion	Cancer	See Section VII. Exhibit A
Benz[b]fluoranthene	Ingestion	Cancer	See Section VII. Exhibit A
Benzo[k]fluoranthene	Ingestion	Cancer	See Section VII. Exhibit A
Indeno [1,2,3-cd]pyrene	Ingestion	Cancer	See Section VII. Exhibit A

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter

as the "products." The sales of these products in California dating as far back as August 16, 2009 are subject to this Notice. As a result of the sales of these products, exposures to the listed chemicals have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposure to the listed chemicals resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from the reasonably foreseeable use of the products.

A. CONSUMER PRODUCT EXPOSURES

California consumers, through the act of buying and consuming the products, are exposed to the listed chemicals. By way of example but not limitation, exposures occur when California citizens eat, sample or otherwise ingest the products. These acts cause consumers to be exposed through the routine consumption of the parts or portions of the products containing the listed chemicals. Additionally, exposures can occur through the routine consumption of other food products (*e.g.*, burger buns) that become contaminated with the listed chemicals through contact with the products and are routinely consumed with the products. People likely to be exposed include both children and adults.

B. OCCUPATIONAL EXPOSURES

Similarly, California employees of the Violator, through the act of consuming the products, are exposed to the listed chemicals and are, therefore, subject to occupational exposures to the listed chemicals. By way of example but not limitation, exposures occur when employees eat, sample or otherwise ingest the products. These acts cause employees to be exposed through the routine consumption of the parts or portions of the products containing the listed chemicals. Additionally, exposure can occur through the routine consumption of other food products (*e.g.*, burger buns) that become contaminated with the listed chemicals through contact with the products and are routinely consumed with the products. People likely to be exposed include California employees of the Violator. 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 the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is 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 Attorney General.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Whitney R. Leeman
c/o Josh Voorhees
The Chanler Group
Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL NOTICE INFORMATION

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter by the Violator.

VI. ADDITIONAL NOTICE INFORMATION (continued)

*Product**	*Retailer(s)*	*Manufacturer(s)/Distributor(s)*
The Burger	BLVD 16; Kimpton Hotel & Restaurant Group, LLC Los Angeles County, Northern California	Currently Unknown

VII. EXHIBIT A

Product Category/Type	*Such As**	*Toxins*
Flame Cooked Ground Beef Products	The Burger	Benz[a]anthracene
Flame Cooked Ground Beef Products	The Burger	Benzo[a]pyrene
Flame Cooked Ground Beef Products	The Burger	Benz[b]fluoranthene
Flame Cooked Ground Beef Products	The Burger	Benzo[k]fluoranthene
Flame Cooked Ground Beef Products	The Burger	Indeno [1,2,3-cd]pyrene

*The specifically identified example of the type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemicals from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

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 Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On August 16, 2012, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);

PROPOSITION 65: A SUMMARY;

CERTIFICATE OF MERIT; AND

CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)

on the alleged Violator listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Niki Leondakis, President
Kimpton Hotel & Restaurant Group, LLC
222 Kearny Street, Suite 200
San Francisco, CA 94108

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

Via 2nd Day Air Service by placing such envelope in a Federal Express Drop-Off Box:	The Attorney General of the State of California;
By placing each envelope in a United States Postal Service mailbox, postage prepaid:	The District Attorney for Each of the 58 counties in California; and The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

A list of addresses for each of these recipients is attached.

Executed on August 16, 2012, at Berkeley, California.

Caroline Liang

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and 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 ***alleged*** exposure to the listed chemicals that is the subject of this 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 plaintiff's 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 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: August 16, 2012

Clifford A. Chanler