

REUBEN YEROUSHALMI (State Bar No. 19398 1)

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Los Angeles, CA 900 10
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Attorneys for Plaintiff CONSUMER ADVOCACY GROUP, INC.

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Telephone: (213) 576-1000
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Attorneys for Defendant

10 KINTETSU ENTERPRISES COMPANY OF AMERICA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

COORDINATION
4182

SECONDHAND SMOKE CASES

This Document Relates to Defendant in the

Consumer Advocacy Group, Inc. v.

San Francisco Superior Court

Coordination Proceeding JUDICIAL COUNCIL

Special Title Rule 1550(b) PROCEEDING NO.

[PROPOSED] STIPULATED
CONSENT JUDGMENT

following case:

Creative Hospitality.CoT., et aL

Case No. 316480

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[PROPOSED] STIPULATED CONSENT JUDGMENT

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1 **1. INTRODUCTION**

2 1.1 Plaintiff. Consumer Advocacy Group, Inc. is a non-profit public
3 interest corporation (hereinafter referred to as "Plaintiff" or "CAG").

4 1.2 Defendant. Kintetsu Enterprises Company of America (hereinafter
5 "Defendant" or "Kintetsu") owns, operates and/or manages two hotels under the Radison and
6 Best Western brand in the State of California. (Plaintiff and Defendant may collectively be
7 referred to as "the Parties".)

8 1.3 Covered Properties. The properties owned, operated or managed by
9 Defendant are referred to collectively as the "Covered Properties." The Covered Properties
10 are identified in Exhibit A to this Consent Judgment.

11 1.4 Proposition 65. Health and Safety Code Sections 25249.5 et seq.
("Proposition 65") prohibits, among other things, a company consisting of ten or more
employees from knowingly and intentionally exposing an individual to chemicals that are
14 known to the State of California to cause cancer and/or birth defects or other reproductive
15 harm without first providing a clear and reasonable warning to such individuals. Exposures
16 can occur as a result of a consumer product exposure, an occupational exposure or an
17 environmental exposure.

18 1.5 Proposition 65 Chemicals. The State of California has officially listed
19 various chemicals pursuant to Health and Safety Code section 25249.8 as chemicals known
20 to the State of California to cause cancer and/or reproductive toxicity.

21 1.6 The Present Dispute. The Consent Judgment pertains to *Consumer*
22 *Advocacy Group, Inc. v. Creative Hospitality Corp., et al.*, San Francisco Superior Court
23 Case No. 316480, filed November 7, 2000 and which is part of Judicial Council
24 Coordination Proceeding 4182 (the "CAG lawsuit").

25 Another Proposition 65 lawsuit among the parties is:
26 *Consumer Advocacy Group, Inc. v. Hilton Corporation*, Los Angeles
Superior
27 Court Case No. BC 276355, filed June 21, 2002. This matter was not part of JCCP
4182; it
28 was dismissed without prejudice June 28, 2002, per plaintiff's request.

1 1.7 Procedural Background. The CAG lawsuit alleges violations of both
2 Proposition 65 and the Unfair Competition Act, Cal. Bus. & Prof. Code § 17200, et seq. On
3 March 20, 2002, the Court granted a motion for judgment on the pleadings filed by Kintetsu,
4 dismissing the environmental and occupational exposure allegations due to an inadequate 60
5 day notice. The Court of Appeal affirmed the ruling regarding the environmental and
6 occupational exposures; the Court reversed the consumer product exposure ruling.

7 *Consumer Advocacy Group, Inc., et al v. Kintetsu Enterprises of America, et al*, Case No.

8 B158840. The matter is presently pending before the California Supreme Court, Case No.
9 S135587.

10 1.8 Plaintiffs 60-Day Notice. More than sixty days prior to filing suit in
11 this action, Plaintiff served on Defendant a document entitled "60-Day Notice of Intent to
12 Sue Under Safety Code Sections 25249.6" (the "Notice"). The Notice is attached hereto as
13 Exhibit B. The Notice stated, among other things, that Plaintiff believed that Defendant was
14 in violation of Proposition 65 for knowingly and intentionally exposing consumers,
15 customers, and employees of the Covered Properties, as well as the public, to certain
16 Proposition 65 listed chemicals. Among those Proposition 65 noticed chemicals were
17 tobacco, tobacco smoke (and its constituent chemicals). This Consent Judgment covers only
18 those specified noticed chemicals (hereinafter "Noticed Chemicals").

19 1.9 Purpose of Consent Judgment. In order to avoid continued and
20 protracted litigation, Plaintiff and Defendant wish to resolve issues raised by the Notice and
21 the CAG lawsuit, pursuant to the terms and conditions described herein. In entering into this
22 Consent Judgment, Plaintiff and Defendant recognize that this Consent Judgment is a full
23 and final settlement of all claims related to tobacco products, tobacco smoke, and
24 secondhand tobacco smoke (and their constituent chemicals). Plaintiff and Defendant also
25 intend for this Consent Judgment to provide, to the maximum extent permitted by law, *res*
26 *judicata* protection for Defendant against all other claims based on the same or similar

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allegations as to the Notice and CAG lawsuit.

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1. 10 No Admission. Defendant disputes that it has violated Proposition 65

described in the Notice and the CAG lawsuit. In particular, Defendant contends that no warning is required for the exposures Plaintiff alleges. Plaintiff disputes the Defendant's defenses.

Based on the foregoing, nothing contained in this Consent Judgment shall be construed as an admission by Plaintiff or Defendant that any action that Defendant may have taken, or failed to take, violates Proposition 65 or any other provision of any other statute, regulation or principal of common law, including without limitation the Unfair Competition Act. Defendant expressly denies any alleged violations of Proposition 65 and/or the Unfair Competition Act.

1. 11 Effective Upon Final Determination. Defendant's willingness to enter into this Consent Judgment is based upon the understanding that this Consent Judgment will fully and finally resolve all claims related to tobacco products, tobacco smoke and secondhand tobacco smoke (and their constituent chemicals), brought by CAG, and that this Consent Judgment will have *resjudicata* effect to the extent allowed by law with regards to both the Proposition 65 allegations and the Unfair Competition Act allegations.

2. JURISDICTION

2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only, Plaintiff and Defendant stipulate that this Court has jurisdiction over the allegations of violations contained in the CAG lawsuit.

2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, Plaintiff and Defendant stipulate that this Court has personal jurisdiction over the Defendant as to the acts alleged in the CAG lawsuit.

2.3 Venue. Venue is proper in the County of Los Angeles for resolution of the allegations made in the CAG lawsuit.

2.4 Jurisdiction to Enter Consent Judgment. This Court has jurisdiction to enter this Consent Judgment as a full and final settlement and resolution of the allegations contained in the Notice, the CAG lawsuit and of all claims that were or could have been

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1 raised based on the facts alleged therein or arising therefrom. This includes allegations
2 relating to both Proposition 65 and the Unfair Competition Act.

3 **3. INJUNCTIVE RELIEF:**

4 **CLEAR AND REASONABLE WARNINGS**

5 3.1 Environmental and Occupational Exposure Warnings. With regard to
6 the alleged exposures to the Noticed Chemicals, Defendant agrees to post within ninety (90)
7 days following the entry of Judgment, a warning with substantially the following language at
8 the primary points of entry at each of the Covered Properties and on the employees' bulletin
9 board or inside of the employees' handbook:

10 WARNING:

11 *This Facility Contains Chemicals Known to the State of*
12 *California to Cause Cancer and Birth Defects or Other*
13 *Reproductive Harm.*

14 Defendant further agrees to post a warning with substantially the following
15 language at every location at each of the Covered Properties where smoking is permitted,
16 including either inside of any guestroom that is designated for smokers or at the elevator
17 landing or stairway area on each floor with designated smoking rooms:

18 WARNING:

19 *This Area is a Designated Smoking Area. Tobacco Smoke is*
20 *Known to the State of California to Cause Cancer and Birth*
21 *Defects or Other Reproductive Harm.*

22 The provision of said warnings shall be deemed to satisfy any and all
23 obligations under Proposition 65 by any and all person(s) or entity(ies) with respect to any
24 and all environmental and occupational exposures to Noticed Chemicals.

25 Each of the warnings set forth in this Section 3.1 shall be clear and reasonably
26 located where they can be easily seen. The warnings, described in this Section 3. 1, may be
27 combined with other information on a single sign and may be provided by the same media
28 and in the same or similar format in which other hotel information is provided to guests,

1 employees and to the public.

2 3.2 Consumer Product Warning. Defendant agrees to post, or take
3 reasonable steps to assure that their gift shop operators/lessees post, a warning at those
4 Covered Properties under Defendant's control where cigars, cigarettes or other tobacco
5 products are sold. For those Covered Properties, the following warning shall be

prominently

6 displayed at or near the point of sale of such products:

7 WARNING:

8 *Tobacco Products Contain/Produce Chemicals Known to the*
9 *State of California to Cause Cancer and Birth Defects or Other*
10 *Reproductive Harm.*

11 The warning set forth in this Section 3.2 shall be displayed at the retail outlet
12 with such conspicuousness, as compared with other words, statements, designs, or devices,
13 as to render the warnings likely to be read and understood by an ordinary individual under
14 customary conditions of purchase or use, consistent with Title 22, California Code of
15 Regulations, § 12601(b)(3).

16 3.3 Alcoholic Beverages. Defendant's compliance with paragraphs 3.1 and
17 3.2 is deemed to fully satisfy Defendant's obligations under Proposition 65 with respect to
18 any exposures and potential exposures to Noticed Chemicals. Defendant's compliance with
19 paragraphs 3.1 and 3.2 will not relieve Defendant of any obligation to continue to provide
20 the statutorily approved warnings for alcoholic beverages.

21 3.4 Future Laws or Regulations. In lieu of complying with the requirements
22 of paragraphs 3.1 and 3.2 hereof, if. (a) any future federal law or regulation which governs
23 the warning provided for herein preempts state authority with respect to said warning; or

(b)

24 any future warning requirements with respect to the subject matter of said paragraphs is
25 proposed by any industry association and approved by the State of California, or (c) any
26 future new state law or regulation specifying a specific warning for hotels with respect to

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27 subject matter of said paragraphs, Defendant may comply with the warning obligations set
28 forth in paragraphs 3.1 and 3.2 of this Judgment by complying with such future federal or

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I state law or regulation or such future warning requirement upon notice to Plaintiffs.

2 3.5 Statutory Amendment to Proposition 65. In the event that there is a
3 statutory or other amendment to Proposition 65, or regulations are adopted pursuant to
4 Proposition 65, which would exempt Defendant, the "Released Parties," as defined at
5 paragraph 4.2 below, or the class to which Defendant belongs, from providing the warnings
6 described herein, then, upon the adoption of such statutory amendment or regulation, and to
7 the extent provided for in such statutory amendment or regulation, Defendant shall be
8 relieved from its obligation to provide the warnings set forth herein.

9 **4. RELEASE AND CLAIMS COVERED**

10 4.1 Effect of Judgment. The Judgment is a full and final judgment with
I I respect to any claims regarding the Noticed Chemicals asserted in the CAG lawsuit against
12 the Released Parties and each of them, and the Notice against Defendant regarding the
13 Covered Properties, including, but not limited to: (a) claims for any violations of Proposition
14 65 by the Released Parties and each of them including, but not limited to, claims arising from
15 environmental and occupational exposures to the Noticed Chemicals, wherever occurring
16 and to whomever occurring, through and including the date upon which the Judgment
17 becomes final, including any and all appeals; (b) claims for violation of the Unfair
18 Competition Act (Cal. Bus. & Prof. Code § 17200, et seq.) arising from the foregoing
19 circumstances, including, but not limited to, CAG's asserted right to injunctive and monetary
20 relief, and (c) the Released Parties' continuing responsibility to provide the warnings
21 mandated by Proposition 65 with respect to the Noticed Chemicals.

22 4.2 Release. Except for such rights and obligations as have been created
23 under this Consent Judgment, Plaintiff, on its own behalf and bringing an action "in the

24 public interest" pursuant to California Health and Safety Code Section 25249.7(d), and
25 "acting for the general public" pursuant to California Business and Professions Code Section
26 17205, with respect to the matters regarding the Noticed Chemicals alleged in the CAG
27 lawsuit, does hereby fully, completely, finally and forever release, relinquish and discharge:
28 (a) Kintetsu, (b) the past, present, and future owners, lessors, sublessors, managers and

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1 operators of, and any others with any interest in, the Covered Properties, and (c) the
2 respective officers, directors, shareholders, affiliates, agents,
employees, attorneys,

3 successors and assigns of the persons and entities described in (a) and (b) immediately above
4 (collectively (a), (b) and (c) are the "Released Parties") of and from any and all claims,
5 actions, causes of action, demands, rights, debts, agreements, promises, liabilities, damages,
6 accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of
7 every nature whatsoever which Plaintiff has or may have against the Released Parties, arising
8 directly or indirectly out of any fact or circumstance occurring prior to the date upon which
9 the Judgment becomes final, including any and all appeals, relating to alleged violations of
10 the Unfair Competition Act and/or Proposition 65 by the Defendant and their respective
11 agents, servants and employees at the Covered Properties, being hereinafter referred to as the
12 "Released Claims." In sum, the Released Claims include any and all allegations made, or
13 that could have been made, by Plaintiff with respect to the Noticed Chemicals relating to
14 Proposition 65 and the Unfair Competition Act, pertaining to the Covered Properties.

15 4.3 Intent of Parties. It is the intention of the Parties to this release that,
16 upon entry of judgment and conclusion of any and all appeals or litigation relating to (i) this
17 Consent Judgment itself and (ii) the CAG lawsuit itself, that this Consent Judgment shall be
18 effective as a full and final accord and satisfaction and release of each and every Released
19 Claim. In furtherance of this intention, Plaintiff acknowledges that it is familiar with
20 California Civil Code section 1542, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO
CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
22 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
24 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
25 DEBTOR.

26 Plaintiff hereby waives and relinquishes all of the rights and benefits that
27 Plaintiff has, or may have, under California Civil Code section 1542 (as well as any similar
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rights and benefits which they may have by virtue of any statute or rule of law in any other state or territory of the United States). Plaintiff hereby acknowledges that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true with respect to the subject matter of this Consent Judgment and the Released Claims, but that notwithstanding the foregoing, it is Plaintiffs intention hereby to fully, finally, completely and forever settle and release each, every and all Released Claims, and that in furtherance of such intention, the release herein given shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of any such additional or different facts.

4.4 Plaintiffs Ability to Represent Public. Plaintiff hereby warrants and represents to Defendant and the Released Parties that (a) Plaintiff has not previously assigned any Released Claim, and (b) Plaintiff has the right, ability and power to release

each Released Claim.

4.5 No Further Force and Effect. Plaintiff and Defendant hereby request

that this Court enter judgment pursuant to this Consent Judgment. In connection therewith, Plaintiff and Defendant waive their right, if any, to a hearing with respect to the entry of said judgment.

5. RESTITUTION AND RELIEF

5.1 Defendant's Payment in Lieu of Civil Penalties. Within 10 days following the latter of (i) entry of a final judgment, including any and all appeals, approving this Consent Judgment and (ii) entry of a final judgment, including any and all appeals, either dismissing the CAG lawsuit as against Defendant and/or entering a judgment in favor of Defendant in the CAG lawsuit, Defendant shall pay to Plaintiff, which is incorporated for the purpose of furthering environmental causes, the sum of \$2,500.00. Payment shall be made to "Consumer Advocacy Group, Inc."

5.2 Consumer Advocacy Group, Inc. will use the payment for such projects and purposes related to environmental protection, worker health and safety, or reduction of

human exposure to hazardous substances (including administrative and litigation costs

1 arising from such projects), as CAG may choose. If CAG seeks reimbursement of any
2 incurred administrative costs in investigating, prosecuting, settling, and/or enforcing of this
3 matter, CAG would disclose to the Court such costs.

4 5.3 Plaintiffs Representations. Plaintiff expressly represents and warrants
5 that it is incorporated for the specific purposes of. (a) protecting and educating the public as
6 to dangerous and harmful products and activities, (b) encouraging members of the public to
7 become involved in issues effecting the environment and the enforcement of environmental
8 statutes and regulations including, but not limited to, Proposition 65 and (c) instituting
9 litigation to enforce the provisions of Proposition 65.

10 **6. ATTORNEY'S FEES AND COSTS**

11 6.1 Payment to Yeroushalmi & Associates. In an effort to defray CAG's
12 expert fees and costs, costs of investigation, attorney's fees, or other costs incurred relating
13 to this matter, Defendant shall pay to the firm of Yeroushalmi & Associates the sum of
14 \$22,500.00. This amount shall be paid within ten (10) days following the latter of (i) entry
15 of a final judgment, including any and all appeals, approving this Consent Judgment and (ii)
16 entry of a final judgment, including any and all appeals, either dismissing the CAG lawsuit
17 as against Defendant and/or entering a judgment in favor of Defendant in the CAG lawsuit.

18 **7. PRECLUSIVE EFFECT OF CONSENT JUDGMENT**

19 7.1 Entirety of Judgment. Entry of judgment by the Court pursuant to this

20 Consent Judgment, *inter alia*:

21 (i) Constitutes full and fair adjudication of all claims against Defendant,
22 including, but not limited to, all claims set forth in the CAG lawsuit, based upon alleged
23 violations of Proposition 65 and the Unfair Competition Act, as well as any other statute,
24 provision of common law or any theory or issue which arose from the alleged failure to

25 provide warning of exposure to tobacco products, tobacco smoke and secondhand tobacco
26 smoke (and their constituent chemicals), which may be present on the Covered Properties
27 identified in Exhibit A and referred to in paragraph 1.5 and which are known to the State of
28 California to cause cancer and/or birth defects or other reproductive harm; and

I (ii) Bars any and all other persons, on the basis of *resjudicata*, the doctrine
2 of mootness and/or the doctrine of collateral estoppel from prosecuting against any Released
3 Party any claim with respect to the Noticed Chemicals alleged in the CAG lawsuit, based
4 upon alleged violations of (a) Proposition 65, (b) the Unfair Competition Act which arose or
5 arises from the alleged failure to provide warning of exposure to tobacco products, tobacco
6 smoke and secondhand tobacco smoke (and their constituent chemicals), which may be
7 present on the Covered Properties identified in Exhibit A and referred to in paragraph 1.5
8 and Exhibit B and which are known to the State of California to cause cancer and/or birth
9 defects or other reproductive harm.

10 **8. DISPUTES UNDER THE CONSENT JUDGMENT**

11 8.1 Disputes. In the event that a dispute arises with respect to either party's

12 compliance with the terms of this Consent Judgment, the Parties shall meet, either in person

13 or by telephone, and endeavor to resolve the dispute in an amicable manner. No action may

14 be taken to enforce the provisions of the Judgment in the absence of such a good faith effort

15 to resolve the dispute prior to the taking of such action. In the event that legal proceedings

16 are initiated to enforce the provisions of the Judgment, however, the prevailing party in such

17 proceeding may seek to recover its costs and reasonable attorney's fees. As used in the

18 preceding sentence, the term "prevailing party" means a party who is successful in obtaining

19 relief more favorable to it than the relief that the other party was amenable to providing

20 during the Parties' good faith attempt to resolve the dispute that is the subject of such

21 enforcement action.

22 **9. NOTICES**

23 9.1 Written Notice Required. Any and all notices between the Parties

24 provided for or permitted under this Consent Judgment, or by law, shall be in writing and

25 shall be deemed duly served:

26 (i) When personally delivered to a party, on the date of such delivery; or
27 (ii) When sent via facsimile to a party at the facsimile number set forth
28 below, or to such other or further facsimile number provided in a notice sent under the terms

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1 of this paragraph, on the date of the transmission of that facsimile; or
2 (iii) When deposited in the United States mail, certified, postage prepaid,
3 addressed to such party at the address set forth below, or to such other or further address
4 provided in a notice sent under the terms of this paragraph, five days following the deposit of
5 such notice in the mails.

6 Notices pursuant to this paragraph shall be sent to the parties as follows:

7 (a) If to Plaintiff:
8 Reuben Yeroushalmi
9 Yeroushalmi & Associates
3700 Wilshire Boulevard, Suite 480
Los Angeles, CA 900 10

10 Facsimile Number: (213) 382-3430

11 (b) If to Defendant:

12 Dean Lehr
13 Kintetsu Enterprises Company of America
Hotel Division
14 1625 Post Street
San Francisco, CA 94115

15 Facsimile Number: (415) 775-8319

16 with a copy to:

Kurt Weissmuller
17 Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP
333 South Hope Street, 16th Floor
18 Los Angeles, CA 90071

19 Facsimile Number: (213) 576-1100

20 or to such other place as may from time to time be specified in a notice to each of the Parties
21 hereto given pursuant to this paragraph as the address for service of notice on such party.

22 10. INTEGRATION

23 10.1 Integrated Writing. This Consent Judgment constitutes the final and

24 complete agreement of the Parties hereto with respect to the subject matter hereof and
25 supersedes all prior or contemporaneous negotiations, promises, covenants, agreements or
26 representations concerning any matters directly, indirectly or collaterally related to the
27 subject matter of this Consent Judgment. The Parties hereto have expressly and intentionally
28 included in this Consent Judgment all collateral or additional agreements which may, in any

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I manner, touch or relate to any of the subject matter of this Consent Judgment and, therefore, 2 all promises, covenants and agreements, collateral or otherwise, are included herein and 3 therein. It is the intention of the parties to this Consent Judgment that it shall constitute an. 4 integration of all their agreements, and each understands that in the event of any subsequent 5 litigation, controversy or dispute concerning any of its terms, conditions or provisions, no 6 party hereto shall be permitted to offer or introduce any oral or extrinsic evidence concerning

7 any other collateral or oral agreement between the Parties not included herein.

8 **11. TIMING**

9 11. 1 Time of Essence. Time is of the essence in the performance of the
10 terms hereof.

11 **REQUIREMENTS**

12 **12. COMPLIANCE WITH REPORTING**

13 12.1 Reporting Forms; Presentation to Attorney General.

The Parties agree

14 to comply with the reporting form requirements referenced in Health & Safety Code

15 §25249.7(f). Pursuant to the regulations promulgated under
16 Health & Safety Code

17 §25249.7(f), Plaintiff presented this Consent Judgment to the California Attorney General's
18 office upon receiving all necessary signatures. It was then presented to the Superior Court
19 for the County of Los Angeles.

20 **13. COUNTERPARTS**

21 13.1 Countemarts. This Consent Judgment may be signed in counterparts
22 and shall be binding upon the Parties hereto as if all of said Parties executed the original
23 hereof

24 **14. WAIVER**

25 14.1 No Waiver. No waiver by any party hereto of any provision hereof
26 shall be deemed to be a waiver of any other provision hereof or of any subsequent breach of
27 the same or any other provision hereof.

28 **15. AMENDMENT**

15.1 In Writing. This Consent Judgment cannot be amended or modified
except by a writing executed by the Parties hereto that expresses, by its terms, an intention to

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modify this Consent Judgment.

16. **SUCCESSORS**

16.1 Binding Upon Successors. This Consent Judgment shall be binding upon and inure to the benefit of, and be enforceable by, the Parties hereto and their respective administrators, trustees, executors, personal representatives, successors and permitted assigns.

17. **CHOICE OF LAWS**

17.1 California Law Applies. Any dispute regarding the interpretation of this Consent Judgment, the performance of the Parties pursuant to the terms of this Consent Judgment, or the damages accruing to a party

by reason of any breach of this Consent Judgment shall be determined under the laws of the State of California, without reference to principles of choice of laws.

18. **NO ADMISSIONS**

18.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has been reached by the Parties to avoid the costs of prolonged litigation. By entering into this Consent Judgment, neither Plaintiff nor Defendant admits any issue of fact or law, including any violations of Proposition 65 or the Unfair Competition Act. The settlement of claims herein shall not be deemed to be an admission or concession of liability or culpability by any party, at any time, for any purpose. Neither this Consent Judgment, nor any document referred to herein, nor any action taken to carry out this Consent Judgment, shall be construed as giving rise to any presumption or inference of admission or concession by Defendant as to any fault, wrongdoing or liability whatsoever. Neither this Consent Judgment, nor any of its terms or provisions, nor any of the negotiations or other proceedings connected with it, nor any other action taken to carry out this Consent Judgment, by any of the Parties hereto, shall be referred to, offered as evidence, or received in evidence in any

pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Consent Judgment, to defend against the assertion of the Released Claims or as otherwise required by law.

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REPRESENTA

19.1 Construction of Consent Judgment. Plaintiff and Defendant each acknowledge and warrant that they have been represented by independent counsel of their own selection in connection with the prosecution and defense of the CAG lawsuit, the negotiations leading to this Consent Judgment and the drafting of this Consent Judgment; and that in interpreting this Consent Judgment, the terms of this Consent Judgment will not be construed either in favor of or against any party hereto.

20.

AUTHORIZATION

20.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies that he or she is authorized by the party he or she represents to enter into this Consent Judgment, to stipulate to the Judgment, and to execute and approve the Judgment on behalf of the party represented.

DATED: January 2006

DATED: January R'2006

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Approved as to form:

DATED: Jsuar-y 2006

DATED: Januaryb, 2006

IT IS SO ORDERED.

18 DATED:

YEROUSHALMI & ASSOCIATES

Attorneys for Plaintiff CONSUMER ADVOCACY GROUP, INC.

KURT WEISSNIULLER
STEPHANIE A. JONES
WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA &~MACCUISH LLP

rt Weissmuller

Attorneys for Defendant
KINTETSU ENTERPRISES COMPANY OF
AMERICA

Superior Court Judge

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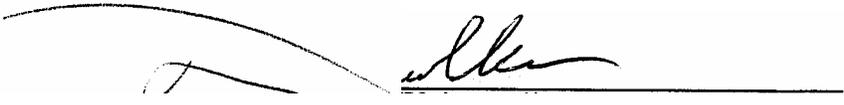
Handwritten signatures and a horizontal line. The line starts under the signature on the left and extends to the right, ending under the signature on the right.

EXHIBIT A
List of Covered Properties

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- 1 Radison Miyako Hotel - San Francisco
1625 Post Street
San Francisco, CA 94115
2. Best Western Miyako Inn
1800 Sutter Street
San Francisco, CA 94115

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EXHIBIT B
60-Day Notice

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Mis no * 5,0,7ven Brwriy YdIx C-A .90212 The noticing party must be contacted through the following rndty-, Reuben -Yeroushairrii and/or, Kamnin Gh.-dcbi-, YEROUSHALMI & GHALCHI 3700 Wilshire Blvd.

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:Zonmental E.-cposurri

While in the course of doing busincz3, at

Me Jocarions Li the 2rracbcd-Ex:hzbirA

From 9/22/19.96through 312212000, the rioator has been and is knowingly and incerimionally =.posing itz customers and *the public cc tchacico* smoke and *other cheraicols* listed beiaw and designated by the State ofCz-Lifornia to cau-,c cancer arid rzprocluctive to-acitt without first giving clesix and =ascnabl wa=drig of that Eacz to the e:xposed persons gica. lth & Safety Code

x? cals ow.

Sectiona 25249.6). The source of expcs=ts is tobaccavr okc and other chc=i listedbel

The locations of the e%posures are inside the ijobics, corridors and ha. l lways of floors where guest roomi cicsgnated for smokers axe located, areas adjaccric to pools and entrances, smoking rooms, and guest roorims dc3ignared for smokirigar:

neloc.2tioris,&7 rho .2r=clied *Exhibit A*

Qcci4pariorial Enosures

While in the course of doing business, Ecorn 5/22/1996through 912~12000, the violator h= be= and is kno"s.,ingly and intentionally c.7osing employees of the violator to robacco smoks: and other chernicals listed below and dc.-; sited by chc State of C21iforaia to cause cancer and

Ign

reproductiT-c toxiciry without Erst clear and :easoriable warning of that fact to the exposed PC--soa (HC21[h & Safety Code Section 25249.6). The source of c%posures include tobacco smokc 2nd other chernicais Listed below at:

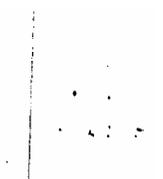
Me loc.;zd=5 ic rho arr2chod Exhibit j~L

The employeas czposed to said chernicals include but 2zc not limited to baneziders, czsl~C:s' wn item, 'WalrressC5, cooks, -;cctlzitic pc=onnc4 maintenance workers, servicc pemoun4 and ctermintricri E pro-, Auen. --ald ctposurms took place inside ~hc lobbies, smoking cooms, guest rooms des' tcd for smoking, and haUways of the Elours where rooms design:arcd for smoking are located at the following locatioz:

Me locations in rbs: .2=cbcd Exhibit A.

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the route of exposure for occupational. Environmental Exposures to the chemicals listed below have been in violation, including direct contact. For each such type and means of exposure, the violator has caused or is causing the above referenced persons to:

CARCINOGENS

Acetyldehyde	Acetaminide
(4-Aminodiphenyl)	4-Aminobiphenyl
Ortho-Anisidine	Aniline
anthracene	Arsenic (inorganic arsenic compounds)
Benzo[fluoranthene	Benzene
Benzo[<i>k</i>]fluoranthene	Benzo[fluoranthene
1,3-Butadiene	Benzo[<i>a</i>]pyrene
Captan	Cadmium
Chrysene	Chromium (hexavalent compounds)
Dibenz[<i>a,h</i>]acridine	Dichlorodiphenyltrichloroethane (DDT)
Dibenzofluoranthene	Dibenz[<i>a,h</i>]acridine
Dibenzofluoranthene	7H-Dibenz[<i>a,h</i>]carbazole
Dibenzofluoranthene	Dibenz[<i>a,h</i>]pyrene
Dibenzofluoranthene	Dibenz[<i>a,h</i>]pyrene
1,1-Dimethylhydrazine (DMH)	Formaldehyde (gas)
Hydrazine	Lead and lead compounds
1-Naphthylamine	2-Naphthylamine
Nickel and certain nickel compounds	2-Nitropropane
N-Nitrosodimethylamine	N-Nitrosodimethylamine
Ortho-Toluidine	N-Nitrosopyrrolidine
Urethane (Ethyl carbamate)	Tobacco Smoke

REPRODUCTIVE TOXINS

Arsenic (inorganic Oxides)	Cadmium
Carbon disulfide	Carbon monoxide
Lead	Nicotine
Toluene	Tobacco Smoke
Urethane	

Proposition 65 requires that notice and intent to sue be given to the violator 60 days before the suit is filed. With this letter, Consumer Advocacy Group, Inc. gives notice of the alleged violation to the violator and the appropriate governmental authorities. This notice covers violations of Proposition 65 that are currently known to Consumer Advocacy Group, Inc. from information available to it. With the copy of this notice submitted to the violator, a copy is provided of The Safe Drinking Water and Tax Enforcement Act of 1986 (Proposition 65): A Summary.

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Q:E=F1_CATE OF SER-71

Page 4

I MM oveT the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occur=d. My business address is 3700 Wilshire Blvd., Suite 480, Los Angeles. CA 90010.

I SERVED THE FOLLOWTNG:

- 1.) 60-Day Notice of Intent to SueU=d= Hcalth & Safety Cocle Section Z~249-6

The Safe Drinking Water and Tom.c Eaforcerricat Act of 1986 (Ptoposition 65): A
Sun=-u7 (wr~y sent to violatarx)

by enclosing a true copy of die same in a scaled cavelope addiw3ed to eich per3on whcsc n-irne and 2ddress is shown below =d depositing the envelope in the United 5=3 mail with the postage fully prepaid.

ID-are of Lvlai~ng- 3/2-2/2000
PLace of 'MailiaK. Los Angeics, C-A

Nil,~IE AND.-IDDRESS OF F-404 PERSON To LVHoiW DOCUNLEN7S WERE MAILED:

Califamia Attorney General
P.O. Box 9442-55
Sacramento CA 94244 -2.550

San Francisco County District Artomey
830 Bryant SL Rm j22
San Francisco. CA 94 103

San Francisco City Attorney
I Dr. Carlton B. Goodled Place. Suite 234
San Fmncisco, CA 94102

Hisao Hiro
Kincetsu EnEerpriscs Comp2ny of Americi
1790 Post Street
San Francisco, CA 94115

I dcl2zc under penilty of pezju~ u7ider the 12w3 of dat State of CaEforzzia th2t the foregoing is true and cozzect.

Date& 8/i __ ~-. /-2- n ' ; ~ ' ~p

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