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17 LA QUINTA CORPORATION, LA QUINTA INNS,
18 INC., AND LA QUINTA PROPERTIES, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

SECONDHAND SMOKE CASES

This Document Relates to Defendants in the
following cases:

*Consumer Advocacy Group, Inc. v.
Vagabond Inns, Vagabond, Inc., Imperial
Hotels, and La Quinta Inns, formerly San
Francisco County Superior Court Case No.
312622,
and
Consumer Advocacy Group, Inc. v. Hilton
Corporation, Vagabond Inns, La Quinta Inns,
et al.
Los Angeles County Superior Court
Case No. BC 276695*

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

[PROPOSED] STIPULATED CONSENT
JUDGMENT

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1. INTRODUCTION

1.1 Plaintiff. Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG"), on its own behalf and as a representative of the People of the State of California, is a non-profit public interest corporation.

1.2 Defendants. La Quinta Corporation, La Quinta Inns, Inc., and La Quinta Properties, Inc. ("La Quinta" or "Defendants") own, operate and/or manage numerous hotels under the La Quinta brand throughout the State of California. In addition, certain of the La Quinta hotels are operated as franchises in California franchised by La Quinta (the "Franchisees"). Collectively, all of the hotels and the Franchisees are referred to as the "La Quinta Defendants".

1.3 Covered Properties. The properties owned, operated or managed by La Quinta Defendants are referred to collectively as the "Covered Properties." The Covered Properties are identified in Exhibit A to this Consent Judgment.

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 known to the State of California to cause cancer, birth defects and other reproductive harm without first providing a clear and reasonable warning to such individuals. Exposures can occur as a result of a consumer product exposure, an occupational exposure or an environmental exposure.

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

1.6 First Wave of Proposition 65 Cases. Before suing under Proposition 65, a plaintiff must first give the defendant a 60-day notice of the violations. Since approximately 1998, plaintiff CAG has sent 60-day notices to a number of industries, including the hotel industry, throughout the State alleging violations of Proposition 65 and Section 17200 et seq. of the Business and Professions Code (the "Unfair Competition Act"). The notices, in

1 general, were based on alleged exposures to consumers, customers, guests, employees and
2 members of the general public to tobacco and/or tobacco products and/or secondhand tobacco
3 smoke. In 1999 a trial court in Los Angeles County Superior Court ruled that the 60-day
4 notices in these cases were inadequate and dismissed the cases. The California Court of
5 Appeal upheld the lower court's ruling on appeal.

6 1.7 Judicial Council Coordinated Proceedings. The second wave of cases, based on
7 new 60-day notices, include claims against hotels, gas stations, mini marts, and drugstores,
8 among others, and allege secondhand smoke exposures as well as exposures to tobacco and
9 tobacco products. These cases have been deemed complex and are proceeding in Los
10 Angeles County Superior Court as Judicial Council Coordinated Proceeding No. 4182
11 ("JCCP 4182"). Most of the cases in JCCP 4182 have been filed by Consumer Advocacy
12 Group ("CAG"). Most, if not all, of La Quinta Defendants' Covered Properties are the subject
13 of lawsuits brought by CAG in JCCP 4182. The following two lawsuits brought by CAG
14 include La Quinta Defendants and/or Covered Properties:

- 15 (1) Consumer Advocacy Group, Inc. v. Vagabond Inns, Vagabond Inc., Imperial
16 Hotels, and La Quinta Inns, formerly San Francisco County Superior Court
17 Case No. 312622, filed June 2, 2000;
- 18 (2) Consumer Advocacy Group, Inc. v. Hilton Corporation, Vagabond Inns, La
19 Quinta Inns, Starwood Hotels and Resorts, Kintetsu Enterprises Company of
20 America, La Quinta Hotel Corporation, Pacifica Hosts, Inc., Accor North
21 America Corporation, Los Angeles County Superior Court Case No. BC
22 276355, filed June 22, 2002;

23 Collectively, these two cases are referred to as the "CAG Lawsuits." The CAG Lawsuits
24 allege violations of both Proposition 65 and the Unfair Competition Act. On March 20, 2002,
25 the Court granted a motion for judgment on the pleadings filed by La Quinta Defendants,
26 dismissing the first of the CAG lawsuits filed by CAG against La Quinta on June 2, 2002, in
27 its entirety with prejudice due to inadequate notice in the first CAG action identified above.

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1 Since that date, CAG has filed new 60-day notices and a new or amended complaint against
2 the La Quinta Defendants.

3 1.8 Plaintiff's 60-Day Notice. More than sixty days prior to filing suit in this
4 action, Plaintiff CAG served on the La Quinta Defendants a document entitled "Amended 60
5 Day Notice of Intent to Sue Under Health & Safety Code Sections 25249.6" (the "Notices").
6 The Notices are attached hereto as Exhibit B. The Notices stated, among other things, that
7 Plaintiff believed that La Quinta Defendants were in violation of Proposition 65 fo:
8 knowingly and intentionally exposing consumers, customers, and employees of the Covered
9 Properties, as well as the public, to certain Proposition 65 listed chemicals. Among those
10 Proposition 65 noticed chemicals were tobacco products, tobacco smoke and secondhand
11 tobacco smoke (and their constituent chemicals), (collectively "Noticed Chemicals"). This
12 Consent Judgment covers only those specified Noticed Chemicals.

13 1.9 La Quinta Defendants' Answer. La Quinta Defendants filed a timely answer in
14 the CAG Lawsuits denying each and every allegation set forth in the CAG Lawsuits and
15 asserting numerous affirmative defenses.

16 1.10 The McKenzie Group Lawsuit. On May 31, 2002, Consumer Defense Group
17 and The McKenzie Group ("CDG/TMG") filed a lawsuit in the Superior Court of the State of
18 California for the County of Orange entitled *Consumer Defense Group and The McKenzie*
19 *Group v. La Quinta Inns, Inc.*, Orange County Superior Court Case No. 02CC00138 naming
20 La Quinta Inns, Inc., and La Quinta Corporation as defendants (the "CDG/TMG Lawsuit").
21 In addition to the alleged Proposition 65 violations, the CDG/TMG Lawsuit includes
22 allegations of violations of the Unfair Competition Act. On October 2, 2002, CDG and TMG
23 filed an add-on petition to coordinate the CDG/TMG Lawsuit with JCCP 4182. CDG/TMG's
24 add-on petition was granted on October 2, 2002.

25 1.11 Purpose of Consent Judgment. In order to avoid continued and protracted
26 litigation, Plaintiff CAG and La Quinta Defendants wish to resolve certain tobacco exposure
27 issues raised by the Notices and the CAG Lawsuits and the CDG/TMG Lawsuit, pursuant to
28 the terms and conditions described herein. In entering into this Consent Judgment, both

1 Plaintiff CAG and La Quinta Defendants recognize that this Consent Judgment is a full and
2 final settlement of all claims related to tobacco products, tobacco smoke and secondhand
3 tobacco smoke (and their constituent chemicals), that were raised or that could have been
4 raised in the Notices and the CAG Lawsuits. In addition, in entering into this Consent
5 Judgment, both Plaintiff and La Quinta Defendants recognize that this Consent Judgment is a
6 full and final settlement of all such Noticed Chemicals claims that were raised or that could
7 have been raised in the CDG/TMG Lawsuit, because the settlement of the CAG Lawsuits
8 moots any and all claims in the CDG/TMG Lawsuit and because CDG and TMG have agreed
9 to dismiss the CDG/TMG Lawsuit against the La Quinta Defendants. Plaintiff CAG and La
10 Quinta Defendants also intend for this Consent Judgment to provide, to the maximum extent
11 permitted by law, *res judicata* protection for La Quinta Defendants against all other claims
12 based on the same or similar allegations as to the Noticed Chemicals.

13 1.12 No Admission. La Quinta Defendants dispute that they have violated
14 Proposition 65 as described in the Notices and the CAG Lawsuits. In particular, La Quinta
15 Defendants contend that no warning is required for the exposures Plaintiff alleges. Plaintiff
16 disputes the La Quinta Defendants' defenses.

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

23 1.13 Effective Upon Final Determination. La Quinta Defendants' willingness to
24 enter into this Consent Judgment is based upon the understanding that this Consent Judgment
25 will fully and finally resolve all claims related to tobacco products, tobacco smoke and
26 secondhand tobacco smoke (and their constituent chemicals), brought both by Plaintiff CAG
27 and by CDG/TMG, and that this Consent Judgment will have *res judicata* effect to the extent
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1 allowed by law with regards to both the Proposition 65 allegations and the Unfair
2 Competition Act allegations.

3 This Consent Judgment will have no force and effect unless and until (i) the
4 CDG/TMG Lawsuit is dismissed with prejudice as to the La Quinta Defendants, and (ii) any
5 litigation by any third party regarding the CAG Lawsuits and/or the validity of this Consent
6 Judgment is fully and finally resolved in La Quinta Defendants' favor, including any and all
7 appeals.

8 2. JURISDICTION

9 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only,
10 Plaintiff and La Quinta Defendants stipulate that this Court has jurisdiction over the
11 allegations of violations contained in the CAG Lawsuits.

12 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, Plaintiff
13 and La Quinta Defendants stipulate that this Court has personal jurisdiction over the La
14 Quinta Defendants as to the acts alleged in the CAG Lawsuits.

15 2.3 Venue. Venue is proper in the County of Los Angeles for resolution of the
16 allegations made in the CAG Lawsuit.

17 2.4 Jurisdiction to Enter Consent Judgment. This Court has jurisdiction to enter
18 this Consent Judgment as a full and final settlement and resolution of the allegations
19 contained in the Notices, the CAG Lawsuits and of all claims that were or could have been
20 raised based on the facts alleged therein or arising therefrom. This includes allegations
21 relating to both Proposition 65 and the Unfair Competition Act.

22 3. INJUNCTIVE RELIEF:

23 CLEAR AND REASONABLE WARNINGS

24 3.1 Environmental and Occupational Exposure Warnings. With regard to the
25 alleged exposures to the Noticed Chemicals, La Quinta Defendants either have posted and
26 agree to continue to maintain, or will post within ninety (90) days following the entry of
27 Judgment, a warning including substantially the following language at the primary points of
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1 entry at each of the Covered Properties under La Quinta's control and on the employees'
2 bulletin board or inside of the employees' handbook:

3 **WARNING:**

4 This Facility Contains Chemicals Known to the State of California to Cause
5 Cancer and Birth Defects or Other Reproductive Harm.

6 La Quinta Defendants further agree to continue to maintain a warning with
7 substantially the following language at every location at each of the Covered Properties under
8 La Quinta's control where smoking is permitted, including either inside of any guestroom that
9 is designated for smokers or at the elevator landings on each floor with designated smoking
10 rooms:

11 **WARNING:**

12 This Area is a Designated Smoking Area. Tobacco Smoke is Known to the
13 State of California to Cause Cancer and Birth Defects or Other Reproductive
14 Harm.

15 Each of the warning signs in this Section 3.1 shall conform with the regulations for alcoholic
16 beverage warning signs in terms of size and print (22 Cal. Code of
17 Regulations §126D1(b)(1)(D)) and shall be located where they can be easily seen. The
18 provision of said warnings shall be deemed to satisfy any and all obligations under
19 Proposition 65 by any and all person(s) or entity(ies) with respect to any and all
20 environmental and occupational exposures to Noticed Chemicals. The warnings described in
21 this Section 3.1 may be combined with other information on a single sign and may be
22 provided by the same media and in the same or similar format in which other hotel
23 information is provided to guests, employees and to the public.

24 3.2 Consumer Product Warning. La Quinta Defendants have been in compliance
25 with Proposition 65 warning requirements relating to consumer product exposures with
26 respect to tobacco products because they or their gift shop operators/lessees post, and have
27 posted, warnings at the Covered Properties; and La Quinta is not legally responsible for the
28 conduct of their gift shop operators/Lessees. La Quinta Defendants agree to continue or take

1 reasonable steps to assure that their gift shop operators/lessees maintain a warning at those
2 Covered Properties under La Quinta's control where cigars, cigarettes, and other tobacco
3 products are sold. For those Covered Properties under La Quinta's control, the following
4 warning shall continue to be prominently displayed at or near the point of sale of such
5 products:

6 **WARNING:**

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

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

14 3.3 Compliance. La Quinta Defendants' compliance with paragraphs 3.1 and 3.2 is
15 deemed to fully satisfy La Quinta Defendants' obligations under Proposition 65 with respect
16 to any exposures and potential exposures to Noticed Chemicals in all respects and to any and
17 all person(s) and entity(ies). La Quinta Defendants' compliance with paragraphs 3.1 and 3.2
18 will not relieve them of any obligation to continue to provide the statutorily approved
19 warnings for alcohol.

20 3.4 Future Laws or Regulations. In lieu of complying with the requirements of
21 paragraphs 3.1 and 3.2 hereof, if: (a) any future federal law or regulation which governs the
22 warning provided for herein preempts state authority with respect to said warning; or (b) any
23 future warning requirements with respect to the subject matter of said paragraphs is proposed
24 by any industry association and approved by the State of California, or (c) any future new
25 state law or regulation specifying a specific warning for hotels with respect to the subject
26 matter of said paragraphs, La Quinta Defendants may comply with the warning obligations
27 set forth in paragraphs 3.1 and 3.2 of this Judgment by complying with such future federal or
28 state law or regulation or such future warning requirement upon notice to Plaintiff.

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

15 4.3 Intent of Parties. It is the intention of the Parties to this release that, upon entry
16 of judgment and conclusion of any and all appeals or litigation relating to (i) this Consent
17 Judgment itself, and (ii) the CAG Lawsuits themselves, 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
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
23 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
24 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
25 THE DEBTOR.

26 Plaintiff hereby waives and relinquishes all of the rights and benefits that Plaintiff has, or may
27 have, under California Civil Code section 1542 (as well as any similar rights and benefits
28 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

1 the subject matter of this Consent Judgment and the Released Claims, but that
2 notwithstanding the foregoing, it is Plaintiff's intention hereby to fully, finally, completely
3 and forever settle and release each, every and all Released Claims, and that in furtherance of
4 such intention, the release herein given shall be and remain in effect as a full and complete
5 general release, notwithstanding the discovery or existence of any such additional or different
6 facts.

7 4.4 Plaintiff's Ability to Represent Public. Plaintiff hereby warrants and represents
8 to La Quinta Defendants and the Released Parties that (a) Plaintiff has not previously
9 assigned any Released Claim, and (b) Plaintiff has the right, ability and power to release each
10 Released Claim.

11 4.5 No Further Force and Effect. Plaintiff and La Quinta Defendants hereby
12 request that this Court enter judgment pursuant to this Consent Judgment. In connection
13 therewith, Plaintiff and La Quinta Defendants waive their right, if any, to a hearing with
14 respect to the entry of said judgment. In the event that (i) this Court denies the joint motion
15 to approve the Consent Judgment brought by Plaintiff and La Quinta Defendants pursuant to
16 Health & Safety Code Section 25249.7, as amended, (ii) a decision by this Court to approve
17 the Consent Judgment is appealed and overturned in the California Court of Appeal or the
18 California Supreme Court; (iii) this Court (or any appellate court hearing the matter) fails to
19 dismiss with prejudice the CDG/TMG Lawsuit as against the La Quinta Defendants or (iv) a
20 third party files litigation to contest the validity of this Consent Judgment or against either
21 Plaintiff and/or La Quinta Defendants relating to this Consent Judgment, then upon notice by
22 any party hereto to the other party hereto, this Consent Judgment shall not be of any further
23 force or effect and the parties shall be restored to their respective rights and obligations as
24 though this Consent Judgment had not been executed by the parties.

25 La Quinta Defendants expressly reserve the right, upon notice to Plaintiff, to withdraw
26 from this Consent Judgment until such time as (i) the CDG/TMG Lawsuit is dismissed with
27 prejudice as to all La Quinta Defendants and (ii) any third-party litigation regarding the CAG
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1 Lawsuits and/or the validity of this Consent Judgment is fully and finally resolved in La
2 Quinta's favor, including any and all appeals.

3 5. ATTORNEY'S FEES AND COSTS

4 5.1 Payment to Yeroushalmi & Associates. In an effort to defray CAG's expert fees
5 and costs, costs of investigation, attorney's fees, or other costs incurred relating to this matter,
6 defendants shall pay to the firm of Yeroushalmi & Associates the sum of fifty thousand and
7 six hundred dollars (\$50,600.00). This amount shall be paid within ten (10) days following
8 the latter of (i) entry of a final judgment, including any and all appeals, approving this
9 Consent Judgment and (ii) entry of a final judgment, including any and all appeals,
10 dismissing the CDG/TMG Lawsuit as against all La Quinta Defendants.

11 6. PRECLUSIVE EFFECT OF CONSENT JUDGMENT

12 6.1 Entry of Judgment. Entry of judgment by the Court pursuant to this Consent
13 Judgment, *inter alia*:

14 (i) Constitutes full and fair adjudication of all claims against La Quinta
15 Defendants, including, but not limited to, all claims set forth in the CAG Lawsuits, based
16 upon alleged violations of Proposition 65 and the Unfair Competition Act, as well as any
17 other statute, provision of common law or any theory or issue which arose from the alleged
18 failure to provide warning of exposure to tobacco products, tobacco smoke and secondhand
19 tobacco smoke (and their constituent chemicals), which may be present on the Covered
20 Properties identified in Exhibit A and referred to in paragraph 1.3 and which are known to the
21 State of California to cause cancer, birth defects, and/or other reproductive harm;

22 (ii) Bars any and all other persons, on the basis of *res judicata* and the
23 doctrine of mootness and/or the doctrine of collateral estoppel, from prosecuting against any
24 Released Party any claim with respect to the Noticed Chemicals alleged in the CAG
25 Lawsuits, and based upon alleged violations of (a) Proposition 65, (b) the Unfair Competition
26 Act, or (c) any other statute, provision of common law or any theory or issue which arose or
27 arises from the alleged failure to provide warning of exposure to tobacco products, tobacco
28 smoke and secondhand tobacco smoke (and their constituent chemicals), which may be

1 present on the Covered Properties identified in Exhibit A and referred to in paragraph 1.3 and
2 which are known to the State of California to cause cancer, birth defects, and/or other
3 reproductive harm.

4 **7. DISPUTES UNDER THE CONSENT JUDGMENT**

5 7.1 Disputes. In the event that a dispute arises with respect to either party's
6 compliance with the terms of this Consent Judgment, the Parties shall meet, either in person
7 or by telephone, and endeavor to resolve the dispute in an amicable manner. No action may
8 be taken to enforce the provisions of the Judgment in the absence of such a good faith effort
9 to resolve the dispute prior to the taking of such action. In the event that legal proceedings
10 are initiated to enforce the provisions of the Judgment, however, the prevailing party in such
11 proceeding may seek to recover its costs and reasonable attorney's fees. As used in the
12 preceding sentence, the term "prevailing party" means a party who is successful in obtaining
13 relief more favorable to it than the relief that the other party was amenable to providing
14 during the parties' good faith attempt to resolve the dispute that is the subject of such
15 enforcement action.

16 **8. THIRD-PARTY LITIGATION**

17 8.1 Duty to Cooperate. In the event of any litigation, including but not limited to
18 opposition to entry of the Consent Judgment by this Court and any or all appeals relating
19 thereto, instituted by a third party or governmental entity or official, Plaintiff and La Quinta
20 Defendants agree to affirmatively cooperate in all efforts to defend against any such
21 litigation.

22 **9. NOTICES**

23 9.1 Written Notice Required. Any and all notices between the parties provided for
24 or permitted under this Consent Judgment, or by law, shall be in writing and shall be deemed
25 duly served:

- 26 (i) When personally delivered to a party, on the date of such delivery; or
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1 (ii) When sent via facsimile to a party at the facsimile number set forth
2 below, or to such other or further facsimile number provided in a notice sent under the terms
3 of this paragraph, on the date of the transmission of that facsimile; or

4 (iii) When deposited in the United States mail, certified, postage prepaid,
5 addressed to such party at the address set forth below, or to such other or further address
6 provided in a notice sent under the terms of this paragraph, three days following the deposit
7 of such notice in the mails.

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

9 (a) If to Plaintiff:

10 Reuben Yeroushalmi
11 Yeroushalmi & Associates
12 3700 Wilshire Boulevard, Suite 480
13 Los Angeles, CA 90010
14 Facsimile Number: 213-382-3430

15 (b) If to Defendant La Quinta International, Inc.:

16 Mark M. Chloupek, General Counsel
17 La Quinta Corporation
18 c/o LQ Management LLC
19 909 Hidden Ridge, Suite 600
20 Irving, TX 75038
21 Facsimile Number: 214-492-6500

22 copy to:
23 Scott A. Kruse
24 Gibson, Dunn & Crutcher
25 333 South Grand Avenue, Suite 4600
26 Los Angeles, CA 90071
27 Facsimile Number: 213-229-6970

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

10. INTEGRATION

10.1 Integrated Writing. This Consent Judgment constitutes the final and complete
agreement of the parties hereto with respect to the subject matter hereof and supersedes all
prior or contemporaneous negotiations, promises, covenants, agreements or representations
concerning any matters directly, indirectly or collaterally related to the subject matter of this

1 Consent Judgment. The Parties hereto have expressly and intentionally included in this
2 Consent Judgment all collateral or additional agreements which may, in any manner, touch or
3 relate to any of the subject matter of this Consent Judgment and, therefore, all promises,
4 covenants and agreements, collateral or otherwise, are included herein and therein. It is the
5 intention of the parties to this Consent Judgment that it shall constitute an integration of all
6 their agreements, and each understands that in the event of any subsequent litigation,
7 controversy or dispute concerning any of its terms, conditions or provisions, no party hereto
8 shall be permitted to offer or introduce any oral or extrinsic evidence concerning any other
9 collateral or oral agreement between the parties not included herein.

10 **11. TIMING**

11 11.1 Time of Essence. Time is of the essence in the performance of the terms
12 hereof.

13 **12. COMPLIANCE WITH REPORTING REQUIREMENTS**

14 12.1 Reporting Forms; Presentation to Attorney General. The parties agree to
15 comply with the reporting form requirements referenced in Health & Safety Code
16 §25249.7(f). Pursuant to the new regulations promulgated under 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 for
19 the County of Los Angeles forty-five (45) days later.

20 **13. COUNTERPARTS**

21 13.1 Counterparts. This Consent Judgment may be signed in counterparts and shall
22 be binding upon the parties hereto as if all of said parties executed the original hereof. The
23 parties agree that the delivery of facsimile and/or electronic signatures shall be acceptable and
24 shall for all purposes be deemed to have the same force and effect as original signatures.

25 **14. WAIVER**

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

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15. AMENDMENT

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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 modify this Consent Judgment.

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16. SUCCESSORS

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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.

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17. CHOICE OF LAWS

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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 La Quinta Defendants admit 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 La Quinta Defendants 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

1 proceeding to enforce this Consent Judgment, to defend against the assertion of the Released
2 Claims or as otherwise required by law.

3 **19. REPRESENTATION**

4 19.1 Construction of Consent Judgment. Plaintiff and La Quinta Defendants each
5 acknowledge and warrant that they have been represented by independent counsel of their
6 own selection in connection with the prosecution and defense of the Lawsuits, the
7 negotiations leading to this Consent Judgment and the drafting of this Consent Judgment; and
8 that in interpreting this Consent Judgment, the terms of this Consent Judgment will not be
9 construed either in favor of or against any party hereto.

10 **20. AUTHORIZATION**

11 20.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies
12 that he or she is authorized by the party he or she represents to enter into this Consent
13 Judgment, to stipulate to the Judgment, and to execute and approve the Judgment on behalf of
14 the party represented.

15
16 Dated: December 21, 2007

17 CONSUMER ADVOCACY GROUP, INC.

18
19 By *Lyn Marcus, Pres.*

20 CONSUMER ADVOCACY GROUP, INC.

21 Dated: December 21, 2007

22 LA QUINTA CORPORATION,
23 LA QUINTA INNS, INC., AND
24 LA QUINTA PROPERTIES, INC.

25 By _____

26 La Quinta Corporation,
27 La Quinta Inns, Inc., and
28 La Quinta Properties, Inc.

1 proceeding to enforce this Consent Judgment, to defend against the assertion of the Released
2 Claims or as otherwise required by law.

3 **19. REPRESENTATION**

4 19.1 Construction of Consent Judgment. Plaintiff and La Quinta Defendants each
5 acknowledge and warrant that they have been represented by independent counsel of their
6 own selection in connection with the prosecution and defense of the Lawsuits, the
7 negotiations leading to this Consent Judgment and the drafting of this Consent Judgment; and
8 that in interpreting this Consent Judgment, the terms of this Consent Judgment will not be
9 construed either in favor of or against any party hereto.

10 **20. AUTHORIZATION**

11 20.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies
12 that he or she is authorized by the party he or she represents to enter into this Consent
13 Judgment, to stipulate to the Judgment, and to execute and approve the Judgment on behalf of
14 the party represented.

15
16 Dated: December __, 2007

17 CONSUMER ADVOCACY GROUP, INC.

18
19 By _____

20 CONSUMER ADVOCACY GROUP, INC.

21 Dated: December __, 2007

22 LA QUINTA CORPORATION,
23 LA QUINTA INNS, INC., AND
24 LA QUINTA PROPERTIES, INC.

25 By  _____

26 La Quinta Corporation,
27 La Quinta Inns, Inc., and
28 La Quinta Properties, Inc.

1 Approved as to form:

2 1/07/08

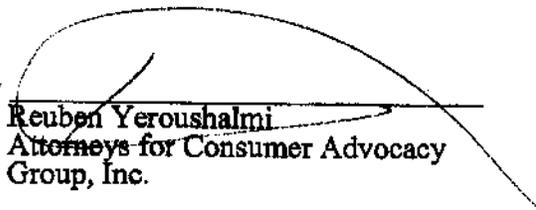
3 Dated: December 21, 2007

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YEROUSHALMI & ASSOCIATES

5

6

By 
Reuben Yeroushalmi
Attorneys for Consumer Advocacy
Group, Inc.

7

8

Dated: December 21, 2007

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GIBSON, DUNN & CRUTCHER LLP

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By 
Scott A. Kruse
Attorneys for La Quinta Corporation,
La Quinta Inns, Inc., and La Quinta
Properties, Inc.

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EXHIBIT A
List of Covered Properties

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EXHIBIT A

List of Covered Properties

(Page 1 of 2 Pages)

- | | |
|---|---|
| 1. La Quinta Inn
3232 Riverside Drive
Bakersfield, CA 93308-6346 | 11. La Quinta Inn
205 East Hospitality Lane
San Bernardino, CA 92408-3411 |
| 2. La Quinta Inn & Suites
46200 Landing Pkwy.
Fremont, CA 94538-6463 | 12. La Quinta Inn
150 Bonita Road
Chula Vista, CA 91910 |
| 3. La Quinta Inn
2926 Tulare
Fresno, CA 93721-1440 | 13. La Quinta Inn
10185 Paseo Montril
San Diego, CA 92129 |
| 4. La Quinta Inn & Suites
3555 Inland Empire Blvd.
Ontario, CA 91764-4908 | 14. La Quinta Inn
630 Sycamore Avenue
Vista, CA 92083-7910 |
| 5. La Quinta Inn
14972 Sand Canyon Avenue
Irvine, CA 92618 | 15. La Quinta Inn
20 Airport Blvd.
S. San Francisco, CA 94080-6515 |
| 6. La Quinta Inn
1515 South Coast Drive
Costa Mesa, CA 92626-1529 | 16. La Quinta Inn
2710 West March Lane
Stockton, CA 95219-6571 |
| 7. La Quinta Inn
3 Centrepointe Drive
La Palma, CA 90623 | 17. La Quinta Inn
5818 Valentine Road
Ventura, CA 93003 |
| 8. La Quinta Inn
2180 Hilltop Drive
Redding, CA 96002-0512 | 18. La Quinta Inn & Suites
New Los Angeles Avenue
Moorpark, CA 93021 |
| 9. La Quinta Inn
200 Jibboom Street
Sacramento, CA 95841-2515 | 19. La Quinta Inn & Suites
5429 West Century Blvd.
Los Angeles, CA 90045 |
| 10. La Quinta Inn
4604 Madison Avenue
Sacramento, CA 95841-2515 | 20. La Quinta Inn & Suites
2721 Hotel Terrace
Santa Ana, CA 92705 |

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EXHIBIT A

List of Covered Properties

(Page 2 of 2 Pages)

21. La Quinta Inn & Suites
1752 Clementine Street
Anaheim, CA 92802

23. La Quinta Inn & Suites
1320 Newbury Road
Thousand Oaks, CA 91320

22. La Quinta Inn & Suites
11131 Folsom Blvd.
Rancho Cordova, CA 95670

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EXHIBIT B
60-Day Notices

EXHIBIT B

VIA U.S. MAIL

La Quinta Inns
P.O. Box 2636
San Antonio, TX 78299
ATTN: Ezzat Coutry, President

La Quinta Inns
909 Hidden Ridge, Suite 600
Irving, TX 75038
ATTN: Francis Cash, President

April 5, 2002

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

*This notice is given by Consumer Advocacy Group, Inc. 9899 Santa Monica Boulevard, # 225, Beverly Hills CA 90212. The noticing party must be contacted through the following entity: Reuben Yeroushalmi, Yeroushalmi & Associates; 3700 Wilshire Blvd. Ste. 480 Los Angeles CA 90010; 213-382-3183. (This Proposition 65 notice fully incorporates herein the contents and effects of the previous Proposition 65 notice sent to the noticed parties. As such, the allegations raised in the prior notices further enhance the ones made herein). This letter constitutes notification that Consumer Advocacy Group, Inc. believes and alleges that Proposition 65, *The Safe Drinking Water and Toxic Enforcement Act* (commencing with Health & Safety Code Section 25249.5) and California Code of Regulations, title 22, section 12601 have been violated by the following company(s) and/or entity(s) (hereinafter, "the violators") and during the time period referenced below:*

La Quinta Inns

	PERIOD OF VIOLATION	
From: 4/5/98	Through 4/5/02	And continuing thereafter.

OCCUPATIONAL EXPOSURES

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

See The Location of The Source of The Exposure on the attached Exhibit A

during the time period referenced above, the violators have been and are *knowingly and intentionally* exposing certain employees of the violators (*see detailed description below*) to *tobacco smoke* and its constituent chemicals as listed below and designated by the State of California to cause cancer and reproductive toxicity, pursuant to California Code of Regulations, title 22, section 12000, *without first giving clear and reasonable warning* of that fact to the exposed employee (Health & Safety Code Section 25249.6).

The *source* of exposure includes *tobacco smoke* and its constituent chemicals as listed below *at the location of the source of the exposure on the attached Exhibit A*. Specifically, the exposure to certain employees (*see detailed description of employees below*) took place in the following areas: in areas and rooms designated for smoking; in the lobbies, hallways, and indoor/outdoor corridors that are adjacent or nearby or on the floors where rooms or areas designated for smoking (hereinafter, "rooms or areas designated for smoking" or its equivalent refers to areas where smoking has been permitted by the violators) are geographically located *at the location of the source of the exposure on the attached Exhibit A*. The *employees exposed* to the said chemicals at such location(s) include, but are not limited to, the employees corresponding to the following *description of the occupations and types of tasks performed*:

- **Certain employees entering guest rooms designated for smoking and/or areas designated for smoking, where smoking has been or is occurring by smokers:**
Such employees include: (1) violators' cleaning personnel (who clean and prepare the guest rooms, e.g., change towels & bed sheets, etc.), bell boys (who deliver or pickup customers' luggage), room service personnel (who deliver and pickup room service items), and repair/maintenance personnel (who repair or service appliances and other damages in the said rooms), who enter the guest rooms designated for

smoking; (2) *any* employees, regardless of the employees' occupation and job task (e.g., see description of occupations and tasks mentioned above), who have been and are entering or passing through *other areas/rooms designated for smoking* including, but not limited to, outdoor entrances, outdoor corridors, other areas, where smoking is permitted by the violators, and where smoking has been and is occurring.

- **Certain employees entering or passing through lobbies, hallways, and corridors, where such areas are affected by smoke that permeates, migrates, and travels from nearby or adjacent areas and rooms designated for smoking:**

Such employees include: (1) reasonably foreseeable employees (i.e., see description of occupations and tasks mentioned above), who pass through or enter lobbies, hallways, and corridors (that are nearby or adjacent to or on the floor where areas or rooms designated for smoking are located), and where such areas are affected by the *tobacco smoke* (that originates from rooms and areas designated for smoking) which permeates, migrates, and travels through the openings of doors and windows and through other structural openings of the areas/rooms designated for smoking into the said lobbies, hallways, and corridors.

In the above-mentioned location(s) and areas/rooms designated for smoking by the violators, smoking has been and is occurring in the said location(s) and areas/rooms by room guests registered at rooms designated for smoking and by smokers at *other areas designated for smoking*. As such, certain employees described above have been and are being exposed to *tobacco smoke* resulting from smoking that has been or is occurring at the violators' premises, in the manner elaborated above. Therefore, the violators have been and are unlawfully exposing the above-mentioned exposed employees to *tobacco smoke* and its constituent chemicals as listed below and designated by the State of California to cause cancer and reproductive toxicity, pursuant to California Code of Regulations, title 22, section 12000, because the violators *failed to first give clear and reasonable warning* of that fact to the exposed employees described above (Health & Safety Code Section 25249.6).

The route of exposure for Occupational Exposures to the chemicals listed below, by the exposed employees described above, have been and are from *tobacco smoke* (in the smoke designated areas/rooms and affected areas as describe-above) through inhalation, meaning that *tobacco smoke* has been and is being breathed in via the ambient air 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 employees described above.

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.

ENVIRONMENTAL EXPOSURES

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

See The Location of The Source of The Exposure on the attached Exhibit A

during the time period referenced above, the violators have been and are *knowingly and intentionally* exposing certain persons and the public (see detailed description below) to *tobacco smoke* and its constituent chemicals as listed below and designated by the State of California to cause cancer and reproductive toxicity, pursuant to California Code of Regulations, title 22, section 12000, *without first giving clear and reasonable warning* of that

fact to such persons and the public (Health & Safety Code Section 25249.6).

The source of exposure includes *tobacco smoke* and its constituent chemicals as listed below at the location of the source of the exposure on the attached Exhibit A. Specifically, the exposure to certain persons including, but not limited to, the violators' customers, room guests, and visitors (see further detailed description below) took place in the following areas: in areas and rooms designated for smoking; in the lobbies, hallways, and indoor/outdoor corridors that are adjacent or nearby or on the floors where rooms or areas designated for smoking (hereinafter, "rooms or areas designated for smoking" or its equivalent refers to areas where smoking has been permitted by the violators) are geographically located at the location of the source of the exposure on the attached Exhibit A. The persons exposed to the said chemicals at the said location(s) include, but are not limited to, the reasonably foreseeable persons corresponding to the following type of persons exposed at common characteristics of facilities or sources of exposure:

- **Certain persons entering guest rooms designated for smoking and/or 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* by entering or passing through the said areas. Such persons who enter the above-referenced areas may include, but are not limited to, violators' room guests, customers (hereinafter "customers" refer to patrons of the violators, other than room guests, going to and leaving from other parts of the hotel within the violators' premise), visitors of the room guests and customers, and delivery persons (who are not affiliated with the violators but are providing a service to the customers or room guests or visitors of the room guests at the areas within the violators' premise). Furthermore, and more specifically, the following persons have been and are being exposed to *tobacco smoke* in the above referenced areas: (1) the violators' new hotel guests checking into a room designated for smoker after a prior guest had smoked inside the same room, (2) a guest's visitor and companion (including children, infants, etc.), (3) and other reasonably foreseeable persons entering such a room (e.g., food delivery persons that are not affiliated with the violators), where such persons have been and are entering such a room while smoking has been or is occurring.
- **Certain persons entering or passing through lobbies, hallway, and corridors, where such areas are affected by smoke that permeates, migrates, and travels from nearby or adjacent areas and rooms designated for smoking:**
Such persons include: (1) reasonably foreseeable persons (i.e., the violators' customers, room guests, visitors of customers and room guests, and aforementioned delivery persons), who pass through or enter lobbies, hallway, and corridors (that are nearby or adjacent to or on the floor where areas or rooms designated for smoking are located), and where such areas are affected by the *tobacco smoke* (that originates from rooms and areas designated for smoking) which permeates, migrates, and travels through the openings of doors and windows and through other structural openings of the rooms and areas designated for smoking into the said lobbies, hallway, and corridors.

In the above-mentioned location(s) and areas/rooms designated for smoking by the violators, smoking has been and is occurring in the said location(s) and areas/rooms by room guests registered at rooms designated for smoking and by smokers at *other areas designated for smoking*. As such, certain persons described above have been and are being exposed to *tobacco smoke* resulting from smoking that has been or is occurring at the violators' premises, in the manner elaborated above. Therefore, the violators have been and are unlawfully exposing the above-mentioned exposed persons to *tobacco smoke* and its constituent chemicals as listed below and designated by the State of California to cause cancer and reproductive toxicity, pursuant to California Code of Regulations, title 22, section 12000, because the violators failed to first give clear and reasonable warning of that fact to the exposed persons described above (Health & Safety Code Section 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* (in the smoke designated areas/rooms and affected areas as describe-above) through inhalation, meaning that *tobacco smoke* has been and is being breathed in via the ambient air 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.

For each such type and means of exposure mentioned-above, the violators have exposed and are exposing the above referenced persons to:

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-Nitrososonicotine
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			

Proposition 65 (Health & Safety Code Section 25249.7) requires that notice and intent to sue be given to the violator(s) 60 days before the suit is filed. With this letter, *Consumer Advocacy Group, Inc.* gives notice of the alleged violations to the violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within 60 days of the sending of this notice, *Consumer Advocacy Group, Inc.* may file suit. This notice covers all violations of Proposition 65 that are currently known to *Consumer Advocacy Group, Inc.* from information now available to it. 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 the least costly manner and one which would be beneficial to all parties involved. In order to encourage the expeditious and proper resolution of this matter, *Consumer Advocacy Group, Inc.* is prepared to forgo all monetary recovery including penalties, restitution, and attorney fees and costs in the event that the noticed facility adopts a complete "smoke-free" policy (and thus discontinuing the rooms/areas designated for smoking).

Dated: April 5, 2002

By: _____

REUBEN YEROUSHALMI,
Attorney for
Consumer Advocacy Group, Inc.

EXHIBIT A
THE LOCATION OF THE SOURCE OF THE EXPOSURE

5818 VALENTINE ROAD
VENTURA, CA 93003

1515 SOUTH COAST DRIVE
COSTA MESA, CA 92626

4604 MADISON AVE.
SACRAMENTO, CA 95841

205 EAST HOSPITALITY LANE
SAN BERNARDINO, CA 92400

2710 WEST MARCH LANE
STOCKTON, CA 95219

20 AIRPORT BOULEVARD
SAN FRANCISCO, CA 94080

2926 TULARE STREET
FRESNO, CA 93721

3232 RIVERSIDE DRIVE
BAKERSFIELD, CA 93308

150 BONITA ROAD
CHULA VISTA, CA 91910

630 SYCAMORE AVENUE
VISTA, CA 92083

14972 SAND CANYON AVENUE
IRVINE, CA 92618

10185 PASEO MONTRIL
SAN DIEGO, CA 92129

2180 HILLTOP DRIVE
REDDING, CA 96002

200 JIBBOOM STREET
SACRAMENTO, CA 95814

3 CENTERPOINTE DRIVE
LA PALMA, CA 90623

3555 INLAND EMPIRE
ONTARIO, CA 91764

46200 LANDING PARKWAY
FREEMONT, CA 94538

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 25248.5 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 12000 through 14000.

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 550 chemicals have been listed as of May 1, 1986. 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: (1) 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.

§14000. 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 25249.5(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.

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: April 5, 2002

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: 9/9/2002 Place of Mailing: Los Angeles, CA

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



Alleged Violators

La Quinta Inns
P.O. Box 2636
San Antonio, TX 78299
ATTN: Ezzat Coutry, President

La Quinta Inns
909 Hidden Ridge, Suite 600
Irving, TX 75038
ATTN: Francis Cash, President



Government Agencies

Alameda County District Attorney
1225 Fallon St, Room 900
Oakland, CA 94612

Sacramento County District Attorney
PO Box 749
Sacramento, CA 95812-0749

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

Dated: 9/9/2002

By: Brian Keith Andrews
Brian Keith Andrews