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8 Attorneys for Plaintiffs
9 **CONSUMER DEFENSE GROUP and THE McKENZIE GROUP**

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18 Attorneys for Defendant
19 **KINTETSU ENTERPRISES COMPANY OF AMERICA**

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY OF LOS ANGELES**

22 Coordination Proceeding
23 Special Title Rule 1550(b)

24 **SECONDHAND SMOKE CASES**

25 This Document Relates to Defendants in the
26 Following cases:

27 *Consumer Defense Group and The McKenzie*
28 *Group v. Wyndham International, et al.*
Orange County Superior Court
Case No. 02CC00206

and

Consumer Advocacy Group, Inc. v.
Creative Hospitality Corp., et al.
San Francisco County Superior Court
Case No. BC 316480

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

Honorable Wendell Mortimer, Jr.
Dept. 307

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1. INTRODUCTION

1.1 Plaintiffs. The McKenzie Group (“TMG”), on its own behalf and as acting in the public interest, is an unincorporated association.

The Consumer Defense Group (“CDG”) on its own behalf and as acting in the public interest, is an unincorporated association. CDG and TMG are referred to herein collectively as “Plaintiffs.”

1.2 Defendant. Kintetsu Enterprises Company of America (“Defendant” or “Kintetsu”) owns, operates and/or manages three hotels under the Radison, Best Western and Miyako Inn brands in the State of California. (Plaintiffs and Defendant may collectively be referred to as “the Parties”.)

1.3 Covered Properties. The properties owned, operated or managed by Defendant 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 and/or birth defects or 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, various organizations have 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

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

6 1.7 Judicial Council Coordinated Proceedings. The second wave of cases,
7 based on new 60-day notices, include claims against hotels, gas stations, mini marts, and
8 drugstores, among others, and allege secondhand smoke exposures as well as exposures to
9 tobacco and tobacco products. These cases have been deemed complex and are proceeding
10 in Los 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”). The Covered Properties were the subject of a lawsuit brought by CAG in
13 JCCP 4182.

14 On September 7, 2006, this Court approved a consent judgment as between
15 Defendant and CAG in which Defendant agreed to post Proposition 65 warnings at the
16 Covered Properties for secondhand tobacco smoke. Defendant agreed to post such warnings
17 in response to the CAG lawsuit and the present action. The Consent Judgment as between
18 CAG and Defendant required the payment of \$2,500 to CAG as a “payment in lieu of Civil
19 Penalties” and the payment of CAG’s attorney’s fees.

20 1.8 Plaintiffs’ 60-Day Notice. More than sixty days prior to filing suit in
21 this action, Plaintiffs served on Defendant a document entitled “Amended 60 Day Notice of
22 Intent to Sue Kintetsu Enterprises Company of America Under Health & Safety Code
23 Section 25249.6” (the “Notice”). The Notice is attached hereto as Exhibit B. The Notice
24 stated, among other things, that Plaintiffs believed that Defendant was in violation of
25 Proposition 65 for knowingly and intentionally exposing consumers, customers, and
26 employees of the Covered Properties, as well as the public, to certain Proposition 65 listed
27 chemicals. Among those Proposition 65 noticed chemicals were tobacco products, tobacco
28 smoke and secondhand tobacco smoke (and their constituent chemicals), motor vehicle

1 *California to Cause Cancer and Birth Defects or Other*
2 *Reproductive Harm.*

3 Defendant further agrees to provide within ninety (90) days following entry of
4 judgment or continue to maintain a warning with substantially the following language at
5 every location at each of the Covered Properties where smoking is permitted, including
6 either inside of any guestroom that is designated for smokers or at the elevator landing or
7 stairway area on each floor with designated smoking rooms:

8 WARNING:

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

12 The provision of said warnings shall be deemed to satisfy any and all
13 obligations under Proposition 65 by any and all person(s) or entity(ies) with respect to any
14 and all environmental and occupational exposures to the Subject Chemicals.

15 The warnings, described in this Section 3.1 shall be clear and reasonable, and
16 located where they can be easily seen.

17 3.2 Consumer Product Warning. Defendant agrees to continue or take
18 reasonable steps to assure that their gift shop operators/lessees maintain a warning at those
19 Covered Properties under Defendant's control where cigars, cigarettes, other tobacco
20 products, and other products containing Subject Chemicals are sold. For those Covered
21 Properties, the following warning shall be prominently displayed at or near the point of sale
22 of such products:

23 WARNING:

24 *Tobacco Products Contain/Produce Chemicals Known to the*
25 *State of California to Cause Cancer and Birth Defects or Other*
26 *Reproductive Harm.*

27 The warning set forth in this Section 3.2 shall be displayed at the retail outlet
28 with such conspicuousness, as compared with other words, statements, designs, or devices,

1 as to render the warnings likely to be read and understood by an ordinary individual under
2 customary conditions of purchase or use, consistent with Title 22, California Code of
3 Regulations, § 12601(b)(3).

4 3.3 Compliance. Defendant's compliance with paragraphs 3.1 and 3.2 is
5 deemed to fully satisfy Defendant's obligations under Proposition 65 with respect to any
6 exposures and potential exposures to the Subject Chemicals in all respects and to any and all
7 person(s) and entity(ies). Defendant's compliance with paragraphs 3.1 and 3.2 will not
8 relieve Defendant of any obligation to continue to provide the statutorily approved warnings
9 for alcohol.

10 3.4 Future Laws or Regulations. In lieu of complying with the requirements
11 of paragraphs 3.1 and 3.2 hereof, if: (a) any future federal law or regulation which governs
12 the warning provided for herein preempts state authority with respect to said warning; or (b)
13 any future warning requirements with respect to the subject matter of said paragraphs is
14 proposed by any industry association and approved by the State of California, or (c) any
15 future new state law or regulation specifying a specific warning for hotels with respect to the
16 subject matter of said paragraphs, Defendant may comply with the warning obligations set
17 forth in paragraphs 3.1 and 3.2 of this Judgment by complying with such future federal or
18 state law or regulation or such future warning requirement upon notice to Plaintiffs.

19 3.5 Statutory Amendment to Proposition 65. In the event that there is a
20 statutory or other amendment to Proposition 65, or regulations are adopted pursuant to
21 Proposition 65, which would exempt Defendant, the "Released Parties," as defined at
22 paragraph 4.2 below, or the class to which Defendant belongs, from providing the warnings
23 described herein, then, upon the adoption of such statutory amendment or regulation, and to
24 the extent provided for in such statutory amendment or regulation, Defendant shall be
25 relieved from its obligation to provide the warnings set forth herein.

26 **4. RELEASE AND CLAIMS COVERED**

27 4.1 Effect of Judgment. The Judgment is a full and final judgment with
28 respect to any claims regarding the Subject Chemicals asserted in the CDG/TMG Lawsuit

1 against the Released Parties and each of them, at the Covered Properties, including, but not
2 limited to: (a) claims for any violations of Proposition 65 by the Released Parties and each of
3 them including, but not limited to, claims arising from consumer product, environmental and
4 occupational exposures to the Subject Chemicals, wherever occurring and to whomever
5 occurring, through and including the date upon which the Judgment becomes final; (b)
6 claims for violation of the Unfair Competition Act (Cal. Bus. & Prof. Code § 17200, et seq.)
7 arising from the foregoing circumstances, including, but not limited to, Plaintiffs' asserted
8 right to injunctive and monetary relief; and (c) the Released Parties' continuing
9 responsibility to provide the warnings mandated by Proposition 65 with respect to the
10 Subject Chemicals.

11 4.2 Release. Except for such rights and obligations as have been created
12 under this Consent Judgment, Plaintiffs, on their own behalf and bringing an action "in the
13 public interest" pursuant to California Health and Safety Code Section 25249.7(d), and
14 "acting for the general public" pursuant to California Business and Professions Code Section
15 17205, with respect to the matters regarding the Subject Chemicals alleged in the CDG/TMG
16 Lawsuit, do hereby fully, completely, finally and forever release, relinquish and discharge:
17 (a) Kintetsu, (b) the past, present, and future owners, lessors, sublessors, managers and
18 operators of, and any others with any interest in, the Covered Properties, and (c) the
19 respective officers, directors, shareholders, affiliates, agents, employees, attorneys,
20 successors and assigns of the persons and entities described in (a) and (b) immediately above
21 (collectively (a), (b) and (c) are the "Released Parties") of and from any and all claims,
22 actions, causes of action, demands, rights, debts, agreements, promises, liabilities, damages,
23 accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of
24 every nature whatsoever which Plaintiffs have or may have against the Released Parties,
25 arising directly or indirectly out of any fact or circumstance occurring prior to the date upon
26 which the Judgment becomes final, including any and all appeals, relating to alleged
27 violations of the Unfair Competition Act and/or Proposition 65 by the Defendant and its
28 respective agents, servants and employees, being hereinafter referred to as the "Released

1 Claims.” In sum, the Released Claims include any and all allegations made, or that could
2 have been made, by Plaintiffs and/or CAG with respect to the Subject Chemicals relating to
3 Proposition 65 and the Unfair Competition Act.

4 4.3 Intent of Parties. It is the intention of the Parties to this release that this
5 Consent Judgment shall be effective as a full and final accord and satisfaction and release of
6 each and every Released Claim. In furtherance of this intention, Plaintiffs acknowledge that
7 it is familiar with California Civil Code section 1542, which provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
9 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
10 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
11 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
12 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
13 HER SETTLEMENT WITH THE DEBTOR.

14 Plaintiffs hereby waive and relinquish all of the rights and benefits that
15 Plaintiffs have, or may have, under California Civil Code section 1542 (as well as any
16 similar rights and benefits which they may have by virtue of any statute or rule of law in any
17 other state or territory of the United States). Plaintiffs hereby acknowledge that they may
18 hereafter discover facts in addition to, or different from, those which they now know or
19 believe to be true with respect to the subject matter of this Consent Judgment and the
20 Released Claims, but that notwithstanding the foregoing, it is Plaintiffs’ intention hereby to
21 fully, finally, completely and forever settle and release each, every and all Released Claims,
22 and that in furtherance of such intention, the release herein given shall be and remain in
23 effect as a full and complete general release, notwithstanding the discovery or existence of
24 any such additional or different facts.

25 4.4 Plaintiffs’ Representation of Non-Assignment. Plaintiffs hereby
26 warrant and represent to Defendant and the Released Parties that (a) Plaintiffs have not
27 previously assigned any Released Claim, and (b) Plaintiffs have the right, ability and power
28 to release each Released Claim.

1 during the Parties' good faith attempt to resolve the dispute that is the subject of such
2 enforcement action.

3 **9. THIRD-PARTY LITIGATION**

4 9.1 Duty to Cooperate. In the event of any litigation, including but not
5 limited to opposition to entry of the Consent Judgment by this Court and any or all appeals
6 relating thereto, instituted by a third party or governmental entity or official, Plaintiffs and
7 Defendant agree to affirmatively cooperate in all efforts to defend against any such litigation.

8 **10. NOTICES**

9 10.1 Written Notice Required. Any and all notices between the Parties
10 provided for or permitted under this Consent Judgment, or by law, shall be in writing and
11 shall be deemed duly served:

- 12 (i) When personally delivered to a party, on the date of such delivery; or
13 (ii) When sent via facsimile to a party at the facsimile number set forth
14 below, or to such other or further facsimile number provided in a notice sent under the terms
15 of this paragraph, on the date of the transmission of that facsimile; or
16 (iii) When deposited in the United States mail, certified, postage prepaid,
17 addressed to such party at the address set forth below, or to such other or further address
18 provided in a notice sent under the terms of this paragraph, five days following the deposit of
19 such notice in the mails.

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

21 (a) If to Plaintiffs:

22 Anthony G. Graham
23 Graham & Martin LLP
24 950 South Coast Drive
25 Suite 220
26 Costa Mesa, CA 92626
27 Facsimile Number: (714) 850-9392
28

1 (b) If to Defendant:

2 Luis Buenaventura
3 Kintetsu Enterprises Company of America
4 1625 Post Street
5 San Francisco, CA 94115
6 (415) 922-3103

7 with a copy to:
8 Kurt Weissmuller
9 Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP
10 333 South Hope Street, 16th Floor
11 Los Angeles, CA 90071
12 Facsimile Number: (213) 576-1100

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

11. INTEGRATION

12 11.1 Integrated Writing. This Consent Judgment constitutes the final and
13 complete agreement of the Parties hereto with respect to the subject matter hereof and
14 supersedes all prior or contemporaneous negotiations, promises, covenants, agreements or
15 representations concerning any matters directly, indirectly or collaterally related to the
16 subject matter of this Consent Judgment. The Parties hereto have expressly and intentionally
17 included in this Consent Judgment all collateral or additional agreements which may, in any
18 manner, touch or relate to any of the subject matter of this Consent Judgment and, therefore,
19 all promises, covenants and agreements, collateral or otherwise, are included herein and
20 therein. It is the intention of the parties to this Consent Judgment that it shall constitute an
21 integration of all their agreements, and each understands that in the event of any subsequent
22 litigation, controversy or dispute concerning any of its terms, conditions or provisions, no
23 party hereto shall be permitted to offer or introduce any oral or extrinsic evidence concerning
24 any other collateral or oral agreement between the Parties not included herein.

12. TIMING

25 12.1 Time of Essence. Time is of the essence in the performance of the
26 terms hereof.
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1 **13. COMPLIANCE WITH REPORTING REQUIREMENTS**

2 13.1 Reporting Forms; Presentation to Attorney General. The Parties agree
3 to comply with the reporting form requirements referenced in Health & Safety Code
4 §25249.7(f). Pursuant to the regulations promulgated under Health & Safety Code
5 §25249.7(f), Plaintiffs presented this Consent Judgment to the California Attorney General's
6 office upon receiving all necessary signatures. The Consent Judgment is now being
7 presented to the Superior Court for the County of Los Angeles for approval.

8 **14. COUNTERPARTS**

9 14.1 Counterparts. This Consent Judgment may be signed in counterparts
10 and shall be binding upon the Parties hereto as if all of said Parties executed the original
11 hereof.

12 **15. WAIVER**

13 15.1 No Waiver. No waiver by any party hereto of any provision hereof
14 shall be deemed to be a waiver of any other provision hereof or of any subsequent breach of
15 the same or any other provision hereof.

16 **16. AMENDMENT**

17 16.1 In Writing. This Consent Judgment cannot be amended or modified
18 except by a writing executed by the Parties hereto that expresses, by its terms, an intention to
19 modify this Consent Judgment.

20 **17. SUCCESSORS**

21 17.1 Binding Upon Successors. This Consent Judgment shall be binding
22 upon and inure to the benefit of, and be enforceable by, the Parties hereto and their
23 respective administrators, trustees, executors, personal representatives, successors and
24 permitted assigns.

25 **18. CHOICE OF LAWS**

26 18.1 California Law Applies. Any dispute regarding the interpretation of this
27 Consent Judgment, the performance of the Parties pursuant to the terms of this Consent
28 Judgment, or the damages accruing to a party by reason of any breach of this Consent

1 Judgment shall be determined under the laws of the State of California, without reference to
2 principles of choice of laws.

3 **19. NO ADMISSIONS**

4 19.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has
5 been reached by the Parties to avoid the costs of prolonged litigation. By entering into this
6 Consent Judgment, neither Plaintiffs nor Defendant admit any issue of fact or law, including
7 any violations of Proposition 65 or the Unfair Competition Act. The settlement of claims
8 herein shall not be deemed to be an admission or concession of liability or culpability by any
9 party, at any time, for any purpose. Neither this Consent Judgment, nor any document
10 referred to herein, nor any action taken to carry out this Consent Judgment, shall be
11 construed as giving rise to any presumption or inference of admission or concession by
12 Defendant as to any fault, wrongdoing or liability whatsoever. Neither this Consent
13 Judgment, nor any of its terms or provisions, nor any of the negotiations or other proceedings
14 connected with it, nor any other action taken to carry out this Consent Judgment, by any of
15 the Parties hereto, shall be referred to, offered as evidence, or received in evidence in any
16 pending or future civil, criminal or administrative action or proceeding, except in a
17 proceeding to enforce this Consent Judgment, to defend against the assertion of the Released
18 Claims or as otherwise required by law.

19 **20. REPRESENTATION**

20 20.1 Construction of Consent Judgment. Plaintiffs and Defendant each
21 acknowledge and warrant that they have been represented by independent counsel of their
22 own selection in connection with the prosecution and defense of the CDG/TMG Lawsuit, the
23 negotiations leading to this Consent Judgment and the drafting of this Consent Judgment;
24 and that in interpreting this Consent Judgment, the terms of this Consent Judgment will not
25 be construed either in favor of or against any party hereto.

26 **21. AUTHORIZATION**

27 21.1 Authority to Enter Consent Judgment. Each of the signatories hereto
28 certifies that he or she is authorized by the party he or she represents to enter into this

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Consent Judgment, to stipulate to the Judgment, and to execute and approve the Judgment on behalf of the party represented.

DATED: ~~May~~ ^{July 23}, 2007

THE MCKENZIE GROUP

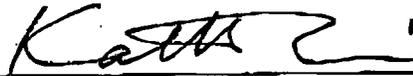


G.D. McKenzie

Attorneys for Plaintiff
THE MCKENZIE GROUP

DATED: May 31, 2007

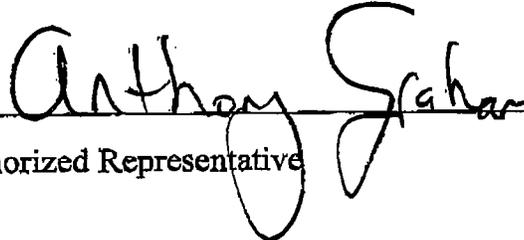
KINTETSU ENTERPRISES COMPANY OF AMERICA



Authorized Representative

DATED: ~~May~~ ^{July 25}, 2007

CONSUMER DEFENSE GROUP



Authorized Representative

1 Consent Judgment, to stipulate to the Judgment, and to execute and approve the Judgment on
2 behalf of the party represented.

3
4 DATED: May __, 2007

THE MCKENZIE GROUP

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6 _____
7 G.D. McKenzie
8 Attorneys for Plaintiff
9 **THE MCKENZIE GROUP**

10 DATED: May 31, 2007

**KINTETSU ENTERPRISES COMPANY
OF AMERICA**

11 _____
12 *Kath*
13 Authorized Representative

14 DATED: May __, 2007

CONSUMER DEFENSE GROUP

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16 _____
17 Authorized Representative
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Approved as to form:

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DATED: July 25
~~May~~ __, 2007

GRAHAM & MARTIN LLP

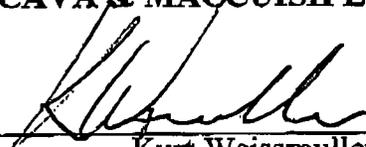


Anthony G. Graham

Attorneys for Plaintiffs
**CONSUMER DEFENSE GROUP and
THE MCKENZIE GROUP**

DATED: June
~~May~~ 18, 2007

**KURT WEISSMULLER
WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MACCUISH LLP**



Kurt Weissmuller

Attorneys for Defendant
**KINTETSU ENTERPRISES COMPANY OF
AMERICA**

IT IS SO ORDERED.

DATED: _____

Honorable Wendell Mortimer, Jr.
Judge of the Superior Court

1 Approved as to form:

2 DATED: May __, 2007

GRAHAM & MARTIN LLP

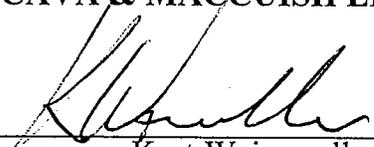
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Anthony G. Graham

6 Attorneys for Plaintiffs
**CONSUMER DEFENSE GROUP and
THE MCKENZIE GROUP**

7 *June*
8 DATED: ~~May~~ 18, 2007

9 KURT WEISSMULLER
WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MACCUISH LLP

10
11 
12

Kurt Weissmuller

13 Attorneys for Defendant
**KINTETSU ENTERPRISES COMPANY OF
AMERICA**

14
15 IT IS SO ORDERED.

16
17 DATED: _____

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Honorable Wendell Mortimer, Jr.
Judge of the Superior Court

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EXHIBIT A

List of Covered Properties

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
3. Miyako Inn & Spa Los Angeles
328 East Third Street
Los Angeles, CA 90012

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EXHIBIT B
60-Day Notice

THE MCKENZIE GROUP

329 South Mayfair Avenue, #362

Daly City, CA 94015

Telephone: (415) 292-3282

Facsimile: (415) 661-7518

Amended 60 Day Notice of Intent to Sue Kintetsu Enterprises Company of
America Under Health & Safety Code Section 25249.6

This letter constitutes notification that Kintetsu Enterprises Company of America (hereinafter, "the Violator") has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) by exposing your customers and employees to chemicals listed by the State of California to cause cancer and/or reproductive toxicity without having in place a clear and reasonable warning scheme, including signs, so that your customers and employees can be warned that, if they enter one of your facilities, they may be exposed to one of those listed chemicals. This notice is given by The McKenzie Group, which may be contacted through G.D. McKenzie at the above address and telephone number.

I. SUMMARY OF VIOLATIONS:

Proposition 65 requires that when a party, such as the Violator, has been or is knowingly and intentionally exposing its customers, the public and/or its employees to a detectable level of any chemical designated by the State of California to cause cancer or reproductive toxicity (the "Designated Chemicals") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that exposure to the potentially exposed persons (Health & Safety Code § 25249.6).

The Violator has also allowed its customers, visitors, guests and employees at each of its facilities to be exposed to designated chemicals associated with its operations.

The Violator, in the ordinary course of business, knows and intends to expose its customers, visitors, guests and employees at each of the following facilities: Radisson Miako Hotel - San Francisco, 1625 Post Street, San Francisco, CA 94115 and Best Western Miako Inn, 1800 Sutter Street, San Francisco, CA 94115 (hereinafter, the "Properties") to Designated Chemicals.

Exposures to Designated Chemicals occur at the Violator's Properties in a variety of ways as described in detail below, including inhalation, dermal contact and absorption from skin and/or clothing and ingestion directly with respect to consumables but also indirectly due to touching of contaminated surfaces and subsequent hand-to-mouth contact. The Violator has failed to provide clear and reasonable warnings as required by Proposition 65, so that its

customers, visitors, guests and employees, who may not wish to be exposed, are warned prior to exposure that they may be exposed to Designated Chemicals.

A. Environmental Exposures

While in the course of doing business at the Properties, from May 18, 1998 through the current date, the Violator has been and is knowingly and intentionally exposing customers, visitors, guests and employees to Designated Chemicals listed below and known in the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 25249.6). The locations of the exposures are at and around the Properties and vary due to the facility activities (e.g. maintenance) and the amenities the properties provide.

B. Occupational Exposures

While in the course of doing business from May 18, 1998 through the current date, the Violator has been and is knowingly and intentionally exposing employees to Designated Chemicals listed below and designated by the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code Section 25249.6). Employees include, and are not limited to: the property's bartenders, cashiers, waiters, waitresses, cooks, engineering staff, janitors, maids, housekeepers, concierge, bell boys, valets, security personnel, maintenance workers, service personnel, administrative personnel, and professional personnel and business invitees and contractors who are employees of others, in and around the Properties and their facilities and amenities.

C. Consumer Product Exposures

While in the course of doing business from May 18, 1998 through the current date, the Violator has been and is knowingly and intentionally exposing customers, visitors, guests and employees to products containing Designated Chemicals listed below and designated by the State of California to cause cancer, birth defects or reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code Section 25249.6). The product exposures include products commonly in use at hotels and lodging establishments. The customers, visitors, guests and employees who are exposed to such products, and the locations of such exposures, are more fully described in this notice.

Proposition 65 requires that a notice of violation and intent to sue be given to the Violator sixty (60) days prior to commencing a private enforcement proceeding pursuant to Health & Safety Code Section 25249.6(d). With this letter, The McKenzie Group gives notice of the alleged violations to the Violator and the Attorney General and District Attorney and City Attorney of cities with a population of over 750,000, in each county and city in which the violation is alleged to have occurred. This notice covers all violations of Proposition 65 that are

currently known to The McKenzie Group from information now available to it. With the copy of this notice submitted to the Violators, a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," is provided.

II. DETAILS OF VIOLATIONS:

After appropriate due diligence and investigation of Violators, including review and verification of detailed information regarding exposure to customers, visitors, guests and employees and consultations with experts on such matters, such unlawful exposures occur in the following ways at the Properties identified.

1. Secondhand Tobacco Smoke

Short description: Tobacco smoke and its by-products contain many chemicals that may be harmful if inhaled. Smoking is allowed in areas designated by the hotel, including designated rooms and some outdoor areas.

Route(s) of exposure: Inhalation and dermal contact with deposited components of smoke.

Person(s) exposed: Guests, visitors and employees (including service, administrative, and professional staff), who enter designated smoking areas.

Locations of the source of exposure: Various designated smoking areas, including guest rooms, open areas, pool areas and parking lots.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, two reasonably anticipated exposures to listed materials are to tobacco smoke (cancer) and to associated component chemicals including, but not limited to, nicotine (developmental toxicity) and carbon monoxide (developmental toxicity). Other Proposition 65-listed chemicals are also known to be found in secondhand tobacco smoke.

2. Cleaning Supplies and Related Activities

Short description: Cleaning supplies are used throughout the hotel to clean, sanitize and maintain the hotel, including in guest rooms. Additionally, laundry services, including dry cleaning activities, may occur and chemicals used in these activities are emitted from the facilities and clothing that have been cleaned.

Route(s) of exposure: Dermal, inhalation and ingestion through hand-to-mouth contact.

Persons exposed: Guests, visitors and employees (including maintenance employees, maids, janitorial, cooks and kitchen personnel) throughout the hotel.

Locations of the source of exposure: Residual cleaning products on surfaces and in air within the hotel from cleaning supply chemicals which volatilize into indoor air.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, reasonably anticipated exposures to listed materials include use of wood polish and refinishing materials, which may contain toluene (developmental toxicity) and petroleum distillates and xylenes which may contain benzene (cancer). Spot removers used on carpets and furniture, and chewing gum removers contain solvents, which may include

methylene chloride (cancer), tetrachloroethylene (cancer), toluene (developmental toxicity) and benzene (cancer). Additionally, perchloroethylene (cancer) is a common dry cleaning agent and residues have been shown to be found in dry cleaned garments and may volatilize to indoor air. Other cleaning supplies have been shown to contain Proposition 65-listed chemicals and their use may expose the identified individuals to these chemicals from their use as a component of the cleaning product or as a trace contaminant in the product.

3. On-Site Construction Activities

Short description: On-site construction on hotel property will generate dust from construction materials.

Route(s) of exposure: Dermal, inhalation and ingestion through hand-to-mouth contact.

Person(s) exposed: Guests, visitors and employees.

Locations of the source of exposure: Any locations on the hotel grounds, including public and employee-only areas, where construction activities may occur.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, reasonably anticipated exposure to listed chemicals include exposure to crystalline silica (cancer) found in mineral-based fiber boards and formaldehyde (cancer), a component of many adhesives. On-site construction activities may also use materials which have been shown to contain other Proposition 65-listed chemicals or which generate Proposition 65 chemicals through their use.

4. Furnishings, Hardware and Electrical Components

Short description: Hotels contain furniture, window treatments, locks and metal keys and electrical appliances, among other furnishings and components. Construction materials, include foams, metals, treated wood, carpets and carpet padding, fabrics, coatings, rubber parts and plastics and vinyl, which are components of the furnishings.

Route(s) of exposure: Inhalation, dermal and ingestion through hand-to-mouth contact.

Person(s) exposed: Guests, visitors and employees (including service, administration and professional staff).

Locations of the source of exposure: All furnished locations in the hotel.

Names of Proposition 65-listed chemicals involved and reasons for listing: Among others, reasonably anticipated exposures are to lead (cancer and reproductive toxicity), found as a trace chemical in many products, including polyvinyl chloride in furniture and fixtures, formaldehyde (cancer), a component of many adhesives, and acetaldehyde (cancer) which are released into room air. Other furnishings and components may contain other Proposition 65-listed chemicals as a component or trace component.

5. Personal Hygiene and Medical Supplies

Short description: Personal hygiene supplies provided by the hotel include cleaners, sanitizers, odor cakes, air fresheners, soaps, shampoos, conditioners and mouthwash. Medical supplies provided by the hotel include aspirin, anti-bacterial ointments and creams, spray treatments, among other medicines.

Routes(s) of exposure: Inhalation, ingestion and dermal contact.

Person(s) exposed: Guests, visitors and employees.

Locations of the source of exposure: Guest and public restrooms, spa and showering facilities and wherever medical supplies are used.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, two reasonably anticipated exposures to Proposition 65-listed materials are from odor cakes and air fresheners which may contain p-dichlorobenzene (cancer) and ethyl alcohol (developmental toxicity); and, the hotel potable water system, which may increase the levels of lead (cancer, reproductive toxicity) found in faucet water. Other personal hygiene supplies and medical supplies may also contain Proposition 65-listed chemicals as a component or trace component.

6. Combustion Sources

Short description: Internal combustion engines, boilers, gas stoves, candles, fireplaces and other combustion sources.

Route(s) of exposure: Inhalation, dermal and incidental ingestion.

Person(s) exposed: Guests, visitors and employees

Locations of the source of exposure: In the vicinity of combustion sources anywhere in the hotel

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, reasonably anticipated exposures to Proposition 65-listed substances are to chemicals generated through the incomplete combustion of any organic fuel source including natural gas, gasoline, diesel, oil, wood, coal and charcoal. Burning of these materials release a large number of Proposition 65-listed chemicals, which vary according to source type but which likely may include carbon monoxide (developmental toxicity), acetaldehyde (cancer), soots and tar (cancer). Other combustion sources may also emit other Proposition 65-listed chemicals as a component or trace component.

7. Office and Art Supplies and Equipment

Short description: Office supplies, art supplies and equipment including carbonless paper, marking pens, correction fluids, copier machine chemicals, ceramics, glues, crayons, paints and solvents.

Route(s) of exposure: Dermal, inhalation and ingestion.

Person(s) exposed: Guests, visitors and employees (including service, administrative and professional staff).

Locations of the source of exposure: All locations in the hotel.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, two reasonably anticipated exposures to Proposition 65-listed chemicals are from the use of marking pens which may contain toluene (developmental toxicity) and correction fluids, which may also contain toluene (developmental toxicity) and benzene (cancer). Other office and art supplies and equipment may also contain other Proposition 65-listed chemicals as a component or trace component.

8. Landscaping Supplies and Pesticide Treatment

Short description: Fertilizers and soil amendments are used frequently in both outdoor and indoor plantings and other vegetative areas to promote growth and improve landscape appearance. Pesticides and herbicides are used to eradicate pests in occupied areas and maintain plants and landscaping areas from infestation.

Route(s) of exposure: Inhalation, dermal and ingestion through hand-to-mouth contact.

Person(s) exposed: Guests, visitors and employees (including service, administrative and professional staff).

Locations of the source of exposure: In landscaped areas with plants and/or trees and hotel locations treated to control pests.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, two reasonably anticipated exposures to Proposition 65-listed chemical are from the use of mineral-based fertilizers and soil amendments, which may contain sewage sludge, which has been shown to contain low levels of lead (cancer and reproductive toxicity) and pesticides, which could contain warfarin (developmental toxicity). Other landscaping supplies and pesticide treatment may also contain Proposition 65-listed chemicals as a component or trace contaminant.

9. Food and Beverage Service

Short description: Food, water and other beverages, including alcoholic beverages, are sold or provided on the premises at bars, lounges, eating establishments and minibars.

Route(s) of exposure: Ingestion

Persons exposed: Employees and visitors (including bartenders, guests and food service workers).

Locations of the source of exposure: Bars and restaurants, guest rooms and recreational facilities where food and beverages are served and where they are taken to be consumed.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, two reasonably anticipated exposures to Proposition 65-listed chemicals are to ethyl alcohol in alcoholic beverages (developmental toxicity) and lead (cancer) from faucets and plumbing fixtures from which water is served. Additionally, food preparation may generate Proposition 65-listed chemicals in some types of food, including from broiling and barbecuing, such as benzo(a)pyrene (cancer), and from frying, such as acrylamide. Other Proposition 65-listed chemicals may also be contained in food and beverage service as a component or a trace contaminant.

10. Transportation-related Exposures

Short description: The fueling and operation of vehicles, including automobiles, buses, maintenance vehicles and motor boats, is associated with hotel operation. Additionally, the hotel contains automobile parking facilities.

Route of exposure: Inhalation

Persons exposed: Employees, guests and visitors.

Locations of the source of exposure: Transportation to and from the hotel and on the hotel grounds.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, two reasonably anticipated exposures to Proposition 65-listed chemicals associated with vehicle operation are exposure to benzene (cancer and reproductive toxicity) found in gasoline and carbon monoxide (reproductive toxicity) found in motor vehicle exhaust. Transportation-related activities may also release or otherwise lead to exposure to other Proposition 65-listed chemicals a component or a trace component.

11. Equipment and Facility Maintenance

Short description: Maintenance equipment and supplies, including motor oil changes, carburetor cleaning and battery replacement, and facility infrastructure repairs, such as painting and plumbing activities, occur throughout the hotel.

Route(s) of exposure: Dermal, inhalation and ingestion through hand to mouth contact.

Person(s) exposed: Employees, visitors and guests.

Locations of the source of exposure: Hotel grounds and maintenance facilities.

Names of Proposition 65 listed chemicals involved and reason for listing: Among others, two reasonably anticipated exposures to Proposition 65-listed chemicals are to lead (cancer and reproductive toxicity) found in batteries and electrical components and methylene chloride (cancer) found in various solvents. Other Proposition 65-listed chemicals may also be contained in maintenance supplies or released during maintenance activities.

12. Recreation, Swimming Pools, Hot Tubs and Beaches

Short description: A variety of recreational activities and facilities are associated with hotel operation.

Route(s) of exposure: Inhalation, dermal and incidental ingestion.

Person(s) exposed: Guests, visitors and employees.

Location of the source of exposure: Hotel grounds where recreational facilities are located, including swimming pools, hot tubs, and beaches.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, two reasonably anticipated exposures to Proposition 65-listed chemicals include use of swimming pools and hot tubs, which may be sanitized with chlorine, which produces chloroform (cancer) and beaches with quartz sand which may expose persons to crystalline silica (carcinogen). Recreational activities may expose persons to other Proposition 65-listed chemicals as a component or trace component.

13. Retail Sales

Short description: On-site retail operations make available for sale a wide variety of consumer products.

Route(s) of exposure: Inhalation, dermal and ingestion.

Person(s) exposed: Purchasers of the products, and hotel employees.

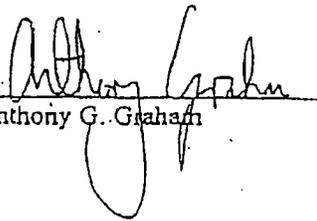
Locations of the source of exposure: Gift shops and wherever else retail sales take place and locations where the purchased item may be used or consumed.

Names of Proposition 65-listed chemicals involved and reason for listing: Among others, two reasonably anticipated exposures to Proposition 65-listed chemicals are to lead (cancer and reproductive) found as a trace contaminant in many metallic articles (notably brass and galvanized metals; and, to tobacco products (cancer and developmental toxicity) Products may expose purchasers and hotel employees to other Proposition 65-listed components as a component or a trace component.

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

Dated: May 18, 2002

LAW OFFICES OF GRAHAM & MARTIN
Attorneys for The McKenzie Group

By: 
Anthony G. Graham

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.3 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, 1996. 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.

Discharges 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 listed 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 12901). 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) 443-5900.

§ 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 25249.3(c)).

Readers should note a chemical has already 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 930) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the U.S. Environmental Protection Agency. The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 930 requires specific additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 930 data gaps for oncogenicity, reproduction, and teratology studies for the first 200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

For purposes of this section, "one mouse" means oncogenicity in mice, "one rat" means oncogenicity in rats, "repro" means reproduction, "tera rodent" means teratogenicity in rodents, "tera rabbit" means teratogenicity in rabbits.

Chemical	Testing Needed
Bendiocarb	one rat, repro, tera rodent
Chloranil	one rat, one mouse, repro, tera rodent, tera rabbit
PCP	repro, one rat
Petroleum distillates, aromatic	one rat, one mouse, repro, tera rodent, tera rabbit

(c) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Toxic Substances.

Under Section 4(a) of the Toxic Substances Control Act, testing of a chemical is required when that chemical may present an unreasonable risk, or is produced in substantial quantities and enters the environment in substantial quantities, or may have significant or substantial human exposure.

For purposes of this section, "tera" means teratogenicity, "tox" means reproductive toxicity, "onc" means oncogenicity.

Chemical	Testing Needed
Alkyl (C12-13) glycidyl ether	tox, tera
1-Amyl methyl ether	tox, tera
Bisphenol A diglycidyl ether	onc, tox
Cyclohexane*	tox, tera
Glycidyl methacrylate*	tera
1,4-Hexamethylene diisocyanate	tox, tera
N-Methylpyrrolidone	onc, tox, tera
Phenol	tox

*The Toxic Substances Control Act section 4 health effects testing programs for cyclohexane and glycidyl methacrylate have been completed and the U.S. Environmental Protection Agency's review of the testing program data is currently underway.

(d) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Pesticide Programs

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires EPA to register pesticides based on data adequate to demonstrate that they will not result in unreasonable adverse effects to people or the environment when used in accordance with their EPA-approved labels.

In 1988, FIFRA was amended to strengthen EPA's pesticide regulatory authority and responsibilities to reregister pesticides registered prior to 1984 to ensure they meet today's stringent scientific and regulatory standards. Reregistration requires registrants to develop up-to-date data bases for each pesticide active ingredient. As part of the reregistration process, modifications may be made to registrations, labels or tolerances to ensure they are protective of human health and the environment. Also, reregistration reviews will identify any pesticides where regulatory action may be necessary to deal with unreasonable risks. EPA has been directed to accelerate the reregistration process so that the entire process is completed by 1997. The 1988 amendments are requiring a substantial number of new studies to be conducted and old studies to be reformatted for EPA review to ensure they are adequate. EPA may, in the future, request additional data or information to further evaluate any concerns over the safety of pesticide products.

The chemicals listed below are those for which data are unavailable or inadequate to characterize oncogenicity, teratogenicity, or reproductive effects potential. For purposes of this section, "onc" means oncogenicity, "tera" means teratogenicity, and "repro" means reproductive toxicity.

Chemical	Data Requirements
Acrolein	onc, tera
Alkyl imidazolines	tera
Ametryn	repro, tera
4-Aminopyridine	onc, repro, tera
4-T-Amylphenol	onc, repro
Aquathale	onc, repro, tera
Benzofluid	onc, repro, tera
Benzothiazoline-3-one	onc, repro, tera
Brodifacoum	repro
Bromonitrostyrene	tera
Buzan 77	repro
Chlorfurenil methyl	tera
Chlorophacinone	tera
Chloropicrin	onc, repro
Chromated arsenicals	tera
Cycloate	onc
Cypermethrin	onc, repro, tera
DCNA	repro, tera
Dibromodicyanobutane	tera
Dicofop-methyl	onc, tera
Dicrotophos	onc, repro
Dihaloalkylthiocarbamate	onc, repro, tera
Dimethipin	onc, repro, tera
Dimethyldithiocarbamate	onc, repro, tera
Disocyp and its compounds	tera
Diphacinone and salts	onc, repro, tera
Diphenylamine	onc, tera
Dipropyl isocinchomerate	repro
Diuron	onc

Chemical	Data Requirements
Iodine	onc, repro, lera
Endothal and salts	onc, repro, lera
Ethionazine	onc
Ethoxyquin	lera
Fenitrothion	lera
Fenvalerate	onc, repro, lera
Fluralaner	repro, lera
Hydroxy-methylthiocarbamate	lera
Imazalil	onc
Inorganic chlorides	onc, repro, lera
Inorganic sulfites	onc, repro, lera
Iodine-potassium iodide	lera
Iprodione	lera
Irgasan	onc, repro, lera
Lampricide	onc, repro
Magnesium phosphide	onc
Malathion	onc
Maneb	onc, lera
MCPB and salts	lera
Mellinidide and salts	lera
Mepiquat chloride	lera
Metaldehyde	onc, lera
Methoxychlor	onc, repro, lera
Methyl isothiocyanate	lera
Methyl parathion	lera
Methylthiocarbamate	repro
MOX 264	lera
Mollinate	repro
Naphthalene	onc
Naphthaleneacetic acid	onc, repro
Naphthalene salts	lera
Napropamide	repro
Niclosamide	onc, lera
Nicotine and derivatives	onc, lera
Nitroxytin	onc, lera
4-Nitrophenol	onc, repro, lera
Ocullinone	lera
Oil of Peonyroyal	lera
Omudine salts	onc, repro, lera
Oxadiazon	repro
Oxyfluorfen	onc
Pebulate	lera
Perfludron	lera
Phenmediphos	onc
Phosal and salts	lera
2-Phenylphenol and salts	onc, lera
Pine oils	lera
Piperonyl butoxide	lera
Poly (hexamethylene biguanide)	onc, repro
Polyethoxylated aliphatic alcohols	onc, repro, lera
Prometon	lera
Propachlor	onc

Chemical	Data Requirements
Propafl	onc, repro
Propiconazole	lera
Propiconazole	onc
Propylene oxide	lera
Pyrazol	onc, repro
Pyrethrin and derivatives	onc, lera
Pyrimidione	onc, lera
Seboxydin	onc
Siduron	onc, repro, lera
Sodium fluoride	lera
Sulfonacurum-methyl	onc, lera
TBT-containing compounds	onc, lera
TCMB	onc, repro, lera
Terbufos	onc, lera
Tetrachlorovinphos	onc
Tetramethis	onc
Thiabendazole and salts	onc, repro, lera
Thidiazuron	onc, repro, lera
Thiodicarb	lera
Thiophanate-methyl	onc, lera
Thiuron	onc
Triadimefon	onc, repro
Triclopyr and salts	onc
Vernolate	onc, repro

Revised: January 1, 1998

HISTORY

1. New section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 17).
2. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 90, No. 2).
3. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 17).
4. Editorial correction of subsection (d) (Register 91, No. 11).
5. Editorial correction of printing error (Register 91, No. 43).
6. Editorial correction instituting inadvertently omitted amendment. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 20).
7. Editorial correction of printing error (Register 93, No. 43).
8. Amendment of subsection (d) filed 8-1-94. Submitted to OAL for printing only (Register 94, No. 31).
9. Amendment of subsections (b), (c), and (d) filed 12-23-94. Submitted to OAL for printing only (Register 95, No. 1).
10. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 95, No. 32).
11. Amendment filed 1-30-97; operative 1-30-97. Submitted to OAL for printing only pursuant to Health and Safety Code section 11249.8 (Register 97, No. 3).
12. Amendment of subsections (b), (c) and (d) filed 2-13-98; operative 2-13-98. Submitted to OAL for printing only pursuant to Health and Safety Code section 11249.8 (Register 98, No. 7).

(The next page is 201.)

Animal bioassay data is admissible and generally indicative of potential effects in humans.

For purposes of this regulation, substances are present occupationally when there is a possibility of exposure either as a result of normal work operations or a reasonably foreseeable emergency resulting from work place operations. A reasonably foreseeable emergency is one which a reasonable person should anticipate based on usual work conditions, a substance's particular chemical properties (e.g., potential for explosion, fire, reactivity), and the potential for human health hazards. A reasonably foreseeable emergency includes, but is not limited to, spills, fires, explosions, equipment failure, rupture of containers, or failure of control equipment which may or do result in a release of a hazardous substance into the workplace.

(b) Administrative Procedure. Followed by the Director for the Development of the Initial List. The Director shall hold a public hearing concerning the initial list. The record will remain open 30 days after the public hearing for additional written comment. Requests to exempt a substance in a particular physical state, volume, or concentration from the provisions of Labor Code sections 6390 to 6399 may be made at this time. If no comments in opposition to such a request are made at the public hearing or received during the comment period, or if the Director can find no valid reason why the request should not be considered, it will be incorporated during the Director's preparation of the list.

After the public comment period the Director shall formulate the Initial list and send it to the Standards Board for approval. After receipt of the list or a modified list from the Standards Board, the Director will adopt the list and file it with the Office of Administrative Law.

(c) Concentration Requirement. In determining whether the concentration requirement of a substance should be changed pursuant to Labor Code section 6382, the Director shall consider valid and substantial evidence. Valid and substantial evidence shall consist of clinical evidence or toxicological studies including, but not limited to, animal bioassay tests, short-term in vitro tests, and human epidemiological studies. Upon adoption, a regulation indicating the concentration requirement for a substance shall consist of a footnote on the list.

(d) Procedures for Modifying the List. The Director will consider petitions from any member of the public to modify the list or the concentration requirements pursuant to the procedures specified in Government Code section 11347.1. With petitions to modify the list, the Director shall make any necessary deletions or additions in accordance with the procedures herein set forth for establishing the list. The Director will review the existing list at least every two years and shall make any necessary additions or deletions in accordance with the procedures herein set forth for establishing the list.

(e) Criteria for Modifying the List. Petitions to add or remove a substance on the list, modify the concentration level of a substance, or reference when a particular substance is present in a physical state which does not pose any human health risk must be accompanied with relevant and sufficient scientific data which may include, but is not limited to, short-term tests, animal studies, human epidemiological studies, and clinical data. If the applicant does not include the complete content of a referenced study or other document, there must be sufficient information to permit the Director to identify and obtain the referenced material. The petitioner bears the burden of justifying any proposed modification of the list.

The Director shall consider all evidence submitted, including negative and positive evidence. All evidence must be based on properly designed studies for toxicological endpoints indicating adverse health effects in humans, e.g., carcinogenicity, mutagenicity, neurotoxicity, organ damage, etc.

For purposes of this regulation, animal data is admissible and generally indicative of potential effects in humans. The absence of a particular category of studies shall not be used to prove the absence of risk.

Inherent insensitivities, negative results must be reevaluated in light of the limits of sensitivity of each study, its test design, and the protocol followed.

In evaluating different results among proper tests, as a general rule, positive results shall be given more weight than negative results for purposes of including a substance on the list or modifying the list in reference to concentration, physical state or volume, so that appropriate information may be provided regarding those positive results. In each case, the relative sensitivity of each test shall be a factor in resolving such contradictions.

NOTE: Authority cited: Section 6330, Labor Code. Reference: Sections 6361, 6330, 6380.3, 6377 and 6311, Labor Code.

- HISTORY
1. New article 3 (section 337) filed 11-3-81; effective thirtieth day thereafter (Register 11, No. 43).
2. Amendment of subsection (d) filed 1-15-87; effective upon filing pursuant to Government Code section 11346.2(d) (Register 17, No. 31).
3. Editorial correction of HISTORY 2, (Register 31, No. 19).

338. Special Procedures for Supplementary Enforcement of State Plan Requirements Concerning Proposition 65.

(a) This section sets forth special procedures necessary to comply with the terms of the approval by the United States Department of Labor of the California Hazard Communication Standard, pertaining to the Incorporation of the occupational applications of the California Safe Drinking and Toxic Enforcement Act (hereinafter Proposition 65), as set forth in 62 Federal Register 31139 (June 6, 1997). This approval specifically placed certain conditions on the enforcement of Proposition 65 with regard to occupational exposures, including that it does not apply to the conduct of manufacturers occurring outside the State of California. Any person proceeding "in the public interest" pursuant to Health and Safety Code section 25249.7(d) (hereinafter "Supplemental Enforcement") or any district attorney or city attorney or prosecutor pursuant to Health and Safety Code section 25249.7(e) (hereinafter "Public Prosecutor"), who alleges the existence of violations of Proposition 65, with respect to occupational exposures as incorporated into the California Hazard Communication Standard (hereinafter "Supplemental Enforcement Matter"), shall comply with the requirements of this section. No Supplemental Enforcement Matter shall proceed except in compliance with the requirements of this section.

(b) 22 CCR section 12901, setting forth specific requirements for the content and manner of service of sixty-day notices under Proposition 65, in effect on April 22, 1997, is adopted and incorporated by reference. In addition, any sixty-day notice concerning a Supplemental Enforcement Matter shall include the following statement:

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

(c) A Supplemental Enforcer or Public Prosecutor who commences a Supplemental Enforcement Matter shall serve a file-stamped copy of the complaint upon the Attorney General within ten days after filing the complaint.

(d) A Supplemental Enforcer or Public Prosecutor shall serve the Attorney General a copy of any motion, or application to a court,

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 2010 Main Street, Suite 1230, Irvine, California 92614.

I SERVED THE FOLLOWING:

- 1.) Amended 60-Day Notice of Intent to Sue Under Health & Safety Code Section 24249.6
- 2.) Certificate of Merit (*only sent to Office of the Attorney General*);
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to violators*)

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.

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

Brian Duskin
Kintetsu Enterprises Company
of America
1625 Post Street
San Francisco, CA 94115

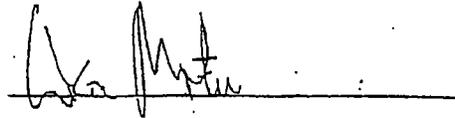
San Francisco City Attorney
1390 Market Street
San Francisco, CA 94102

California Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

San Francisco County DA
880 Bryant Street
San Francisco, CA 94103

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

Dated: May 18, 2002



CERTIFICATE OF MERIT

I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing The McKenzie Group and Consumer Defense Group (hereinafter referred to collectively as the "noticing party") in relation to the "60 Day Notice of Intent to Sue" served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have consulted with appropriate and qualified scientific experts and, having reviewed relevant scientific data and results of relevant test reports, as well as having reviewed the facts as set forth below regarding the exposures to the listed chemicals set forth in the attached "60 Day Notice of Intent to Sue", I have a good faith basis for believing that the exposures set forth in the Notice are likely to be above the minimum significant risk level for the chemicals at issue. I have provided the information, reports and opinions I have relied upon to the Attorney General's office as required by the regulations promulgated under Proposition 65.

3. 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 noticing parties 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.

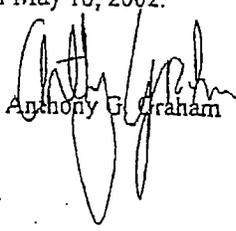
4. The information referred to in paragraph 3 is as follows; by physical investigation of the locations referenced in the Notice as well as through interviews of the relevant controlling parties as to those locations, the noticing party discovered that:

- (1) the violator owns and/or operates the specific subject property ("operate" in this

context means controls the use of the property, and/or its management, and/or the decision as to whether to permit the smoking of tobacco products at that facility);

- (2) the violator has more than nine employees;
- (3) the violator permits the specific conduct set forth in the Notice which results in actual exposures taking place at each of the subject properties;
- (4) at each of the properties referenced in the Notice the noticing party examined the major entrances to the facilities, entrances to buildings, public thoroughways and recreational areas, as well as the parking facilities at those locations;
- (5) at none of the locations set forth in the Notice did the noticing party see any appropriate sign warning the public, residents or employees that the specific conduct set forth in the Notice which results in exposures to chemicals listed by the State as either carcinogens or reproductive toxins, or any other sign purporting to comply with the requirements of Proposition 65.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Irvine, California on May 16, 2002.


Anthony G. Graham