

# NICHOLAS & TOMASEVIC LLP

ATTORNEYS AT LAW

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225 Broadway, 19<sup>th</sup> Floor

San Diego, CA 92101

June 22, 2020

**Via Certified Mail**

Grace Gower  
Counsel for Myst Hookah Lounge  
Simpson, Delmore, Greene LLP  
600 W Broadway STE 400  
San Diego, CA 92101

Myst Lounge  
Attn: Corey Nigrelli  
765 5th Ave.  
San Diego, CA 92101

Re: **Withdrawal of Proposition 65 Notice of Violation**

To Whom It May Concern:

Please take notice that Kim Embry hereby withdraws her 60-Day Notice of Violation AG 2018-01790, in addition to the supplemental 60-Day Notice of Violation AG 2018-02275, copies of which are enclosed with this letter.

Please do not hesitate to contact our office with any questions.

Sincerely,



Shaun Markley

Enclosure

cc(via email): Harrison M. Pollak  
Robert Thomas  
Trish Gerken

# NICHOLAS & TOMASEVIC<sup>LLP</sup>

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225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

December 20, 2018

**Via Certified Mail**

Grace Gower  
Counsel for Myst Hookah Lounge  
Simpson, Delmore, Greene LLP  
600 W Broadway STE 400  
San Diego, CA 92101

**Re: Proposition 65 Supplemental Notice of Violation**

To Whom It May Concern,

Please note: this notice supplements the original notice AG 2018-01790 dated October 5, 2018

We represent Kim Embry, a citizen of the State of California acting in the interest of the general public. This letter serves as notice that the parties listed above are in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, commencing with section 25249.6 of the Health and Safety Code ("Proposition 65"), by knowingly and intentionally exposing its customers, consumers, guests, the public, and employees to carcinogens and other toxicants resultant from charcoals and tobacco alternatives used for the smoking of hookah without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 25249.6).

The violations alleged by this notice consist of types of harm that may potentially result from exposures to carcinogens released by charcoals and tobacco alternatives used with hookah smoking. Charcoals used for hookah smoking have been found to have high levels of carbon monoxide (CO), listed as a developmental toxin on July 1, 1989. Additionally, raw charcoals and steam stones listed as tobacco alternatives have been found to have high concentrations of arsenic, cadmium, lead, nickel and other toxic metals. A number of other carcinogens listed on the Proposition 65 chemical list have been found in the smoke released from charcoals. These carcinogens include, but are not limited to: benzene, quinoline, benzofuran, ethylbenzene, and styrene.

The route of exposure to the chemicals listed above have been and are from smoking through inhalation, meaning that 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. In addition, the route of exposure for users of hookah pipes occurs through inhalation from a mouthpiece on the hookah device. Exposures have been occurring since the smoking of hookah has been permitted on the premises, which we understand has been at least for the past four years and continues to this day and will continue to occur as long as the establishment is in operation.

Proposition 65 requires that a clear and reasonable warning is provided regarding the exposures to environmental and direct inhalation of hookah smoke in designated smoking areas. The Parties are in violation of Proposition 65 by failing to provide such warning to consumers and as a result exposure to hookah smoke have been occurring without proper warnings.

Pursuant to Proposition 65, notice and intent to sue shall be provided to violators 60 days before filing a complaint. This letter provides notice of the alleged violation to the parties listed above and the appropriate governmental authorities. A summary of Proposition 65 is attached.

If you have any questions or wish to discuss any of the above, please contact me.

Sincerely,



Shaun Markley

Enclosures

# NICHOLAS & TOMASEVIC<sub>LLP</sub>

ATTORNEYS AT LAW

Tel: 619-325-0492  
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225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

October 5, 2018

**Via Certified Mail**

Myst Lounge  
Attn: Corey Nigrelli  
765 5<sup>th</sup> Ave.  
San Diego, CA 92101

**Re: Proposition 65 Notice of Violation**

To Whom It May Concern:

We represent Kim Embry, a citizen of the State of California acting in the interest of the general public. This letter serves as notice that the parties listed above are in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, commencing with section 25249.6 of the Health and Safety Code ("Proposition 65"), by knowingly and intentionally exposing its customers, consumers, guests, the public, and employees to tobacco smoke and other chemicals listed below and designated by the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 25249.6).

In particular, the violations alleged by this notice consist of types of harm that may potentially result from exposures to environmental tobacco smoke, including but not limited to hookah smoking. Tobacco smoke was listed as a developmental toxin on June 9<sup>th</sup>, 2006. Tobacco smoke is a chemical known to the State of California to cause cancer. Tobacco smoke also contains carcinogens and reproductive toxins including: Carbon disulfide, 1,1-Dimethylhydrazine (UDMH), 1,3-Butadiene, 1-Naphthylamine, 2-Naphthylamine, 2-Nitropropane, 4-Aminobiphenyl (4-amino-dyphenyl), 7H-Dibenzo[c,g]carbazole, Acetaldehyde, Acetamide, Acrylonitrile, Aniline, Urethane, Arsenic (inorganic arsenic compounds), Benz[a]anthracene, Benzene, Benzo[a]pyrene, Benzo[b]fluoranthene, Benzo[j]fluoranthene, Benzo[k]fluoranthene, Cadmium, Captan, Chromium (hexavalent compounds), Chrysene, Dibenz[a,h]acridine, Lead, Dibenz[a,h]anthracene, Dibenz[a,j]acridine, Dibenzo[a,e]pyrene, Dibenzo[a,h]pyrene, Dibenzo[a,i]pyrene, Dibenzo[a,l]pyrene, Dichlorodiphenyltrichloroethane (DDT), Formaldehyde (gas), Hydrazine, Lead and lead compounds, Nickel and certain nickel compounds, N-Nitrosodiethanolamine, Toluene, N-Nitrosodiethylamine, N-Nitrosodi-n-butylamine, N-Nitrosomethylethylamine, N-Nitrosomorpholine, N-Nitrosonicotine, N-Nitrosopiperidine, N-Nitrosopyrrolidine, Ortho-Anisidine, Ortho-Toluidine, Urethane (Ethyl carbamate), Carbon

monoxide, and Nicotine. Hookah smoking is a particularly harmful method of tobacco smoking because the tobacco is exposed to high heat from burning charcoal.

The route of exposure to the chemicals listed above have been and are from tobacco smoke 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. In addition, the route of exposure for users of hookah pipes occurs through inhalation from a mouthpiece on the hookah device.

The location of the environmental exposure is inside of the premises designated for use of hookah devices, and other tobacco delivery devices, including seating areas where the premise has tables and chairs and/or couches, in addition to any front or back seating or patio areas where hookah pipes are used to smoke, where smoking has been or is occurring. People entering or passing through such areas are affected by smoke that permeates, migrates, and travels from nearby or adjacent areas where hookah smoking is permitted also constitute locations of the violation.

This Notice includes violations of Proposition 65 for occupational exposure. The employees include those reasonably foreseeable employees who have to enter rooms designated for smoking and/or using hookahs, including waiters and waitresses, bar tenders, people that bus tables, repair/maintenance personnel, entertainment providers, maintenance workers, security personnel, cashiers and managers of the locations who have been and are entering or passing through areas/rooms/outdoor adjacent patio spaces that are designated for smoking including but not limited to, outdoor entrances, outdoor corridors, and other areas/rooms designated for smoking where smoking and using hookahs has been and is occurring, as the tobacco smoke permeates, migrates, and travels through the openings of doors and windows and through other structural openings of the areas/rooms designated for smoking and hookah use. The affected employees of the Party in violation are exposed to environmental tobacco smoke (ETS) regularly during business hours. The Party permits customers to smoke tobacco in indoor and outdoor seating areas. Customers and employees of the Party are exposed to tobacco smoke when loitering or walking through these designated smoking areas.

The route of exposure for employees is through inhalation contact with their mouths, throats, bronchi, esophagi, and lungs as described above. Second-hand tobacco smoke causes environmental exposure through inhalation. The environmental and occupational exposures have been occurring since the smoking of tobacco and/or the use of hookah has been permitted on the premises, which we understand has been at least for the past four years and continues to this day, and will continue to occur as long as the establishment is in operation.

Proposition 65 requires that a clear and reasonable warning is provided regarding the exposures to environmental and direct inhalation of tobacco smoke in designated smoking areas. The Parties are in violation of Proposition 65 by failing to provide such warning to the public,

consumers and employees and as a result exposures to tobacco smoke have been occurring without proper warnings.

Pursuant to Proposition 65, notice and intent to sue shall be provided to violators 60 days before filing a complaint. This letter provides notice of the alleged violation to the parties listed above and the appropriate governmental authorities. A summary of Proposition 65 is attached.

If you have any questions or wish to discuss any of the above, please contact me.

Sincerely,



Shaun Markley

Enclosures