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60 Day Notice of Intent to Sue Outback Steakhouse, Inc., Outback Steakhouse of Florida, Inc. and Roy's Restaurants Under Health & Safety Code Section 25249.6

This letter constitutes notification that Outback Steakhouse, Inc., Outback Steakhouse of Florida, Inc. and Roy's Restaurants (hereinafter referred to collectively as "the Violator") has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5). This notice is given by the Consumer Defense Group Action, Inc. (hereinafter "Consumer Defense Group"), which may be contacted through the following entity: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

Summary of Violation:

Proposition 65 requires that when a party, such as the Violator, has been and is knowingly and intentionally exposing its customers, the public and/or its employees to chemicals designated by the State of California to cause cancer and reproductive toxicity ("the Designated Chemicals") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons (Health & Safety Code Section 24249.6). Mercury, mercury compounds, methyl mercury and methyl mercury compounds are Designated Chemicals. Methyl mercury compounds were listed under Proposition 65 as a chemical known to the State of California to cause cancer on May 1, 1996. Methyl mercury was listed as a chemical known to the State of California to cause reproductive toxicity on July 1, 1987. Mercury and mercury compounds were listed as chemicals known to the State of California to cause reproductive toxicity on July 1, 1987. 22 CCR § 12000.

The Violator owns and/or operates the "Outback Steakhouse" chain of restaurants which operate at each of the facilities listed on Exhibit A to this Notice and the "Roy's" chain of restaurants which operate at each of the facilities listed on Exhibit B to this Notice (hereinafter referred to collectively as "the Facilities"). In the ordinary course of business, the Violator sells food for consumption by its customers. One of the foods it sells and serves are various kinds of fish and shellfish in the form of meals containing ahi tuna, swordfish, salmon, cod, halibut, shark and sole (hereinafter referred to collectively as "Fish"). Fish contains mercury, mercury compounds, methyl mercury and methyl mercury compounds.

At the "Outback Steakhouse" restaurants listed on Exhibit A the Violator serves on a daily basis salmon in the form of "North Atlantic Salmon", and, as part of its "Botany Bay Fish of the Day" meals serves cod, halibut, shark, swordfish, and sole. Each of these Fish contains mercury, mercury compounds, methyl mercury and methyl mercury compounds. Customers and employees are exposed to these Designated Chemicals when they ingest the Fish by eating it in the form of the meals delineated above.

At the "Roy's" restaurants listed on Exhibit B the Violator serves swordfish in the form of "kahana style shutome" and ahi tuna in the form of "tri-peppercorn crusted ahi steak." Each of these Fish contains mercury, mercury compounds, methyl mercury and methyl mercury compounds. Customers and employees are exposed to these Designated Chemicals when they ingest the Fish by eating it in the form of the meals delineated above.

The Violator knows or has known since at least July 1, 1988 that the Fish served at the restaurants it owns and/or operates contain methyl mercury; since May 1, 1997 that the Fish contain methyl mercury compounds; and since July 1, 1991 that the Fish contain mercury and mercury compounds, and that persons eating the Fish are exposed to these chemicals.

Although the Violator has chosen to allow its customers and employees to be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish, the Violator has specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. Investigators for the Consumer Defense Group have conducted an investigation of the Facilities between January 25, 2003 and February 6, 2003 (the "Investigation Period"). During those investigations the Consumer Defense Group discovered that the properties are owned and/or operated by the Violator. Further, the Consumer Defense Group discovered that the Violator has more than nine employees, and not only permits but requires the preparation and sale of Fish at each of the Facilities. Finally, the investigators for the Consumer Defense Group saw that at none of the Facilities during the Investigation Period was there a clear and reasonable warning sign at the front entrances, inside the Facilities at the reception area, or on the menus in use at the Facilities.

Product Exposures:

While in the course of doing business, at the locations in the attached Exhibit A, from at least the period between January 25, 2003 and February 6, 2003, the Violator has been and is knowingly and intentionally exposing its customers and employees to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish in the form as delineated above, without providing a clear and reasonable warning at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. The source of exposures is the Fish prepared and offered for sale at each of the Facilities. The exposure takes place when the customers and/or employees ingest the Fish at the Facilities.

Environmental Exposures:

While in the course of doing business, at the locations in the attached Exhibit A, from at

least the period between January 25, 2003 and February 6, 2003, the Violator has been and is knowingly and intentionally exposing its customers and employees to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish in the form as delineated above, without providing a clear and reasonable warning at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. The source of exposures is the Fish prepared and offered for sale at each of the Facilities. The exposure takes place when the customers and/or employees ingest the Fish at the Facilities.

Occupational Exposures:

While in the course of doing business, at the locations in the attached Exhibit A, from at least the period between January 25, 2003 and February 6, 2003, the Violator has been and is knowingly and intentionally exposing its employees to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish in the form as delineated above, without providing a clear and reasonable warning at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. The source of exposures is the Fish prepared and offered for sale at each of the Facilities. The exposure takes place when the employees ingest the Fish at the Facilities. Employees include and are not limited to bartenders, cashiers, waiters, waitresses, cooks, service personnel and administrative personnel. Such exposures take place inside the Facilities when and where meals containing Fish are consumed. The route of exposure for Product, Occupational and Environmental Exposures to the Designated Chemicals has been ingestion, that is via the eating of the Fish contained in the meals delineated above.

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

Dated: February 10, 2003

By:

EXHIBIT A

1. 166 E. Huntington Drive
Arcadia, CA 91006
2. 5051 Stockdale Hwy.
Bakersfield, CA 93309
3. 402 Pointe Drive
Brea, CA 92621
4. 7575 Beach Boulevard
Buena Park, CA 90622
5. 1761 N. Victory Place
Burbank, CA 91504
6. 1887 S. Bascom Avenue
Campbell, CA 95008
7. 1990 E. 20th Street
Chico, CA 95928
8. 1418 Azusa Avenue
City of Industry, CA 91748
9. 151 McKinley Street
Corona, CA 92879
10. 1670 Newport Blvd.
Costa Mesa, CA 92627
11. 1476 N. Azusa Ave.
Covina, CA 91723
12. 20630 Valley Green Drive
Cupertino, CA 95014
13. 371 Gellert Blvd.
Daly City, CA 94015
14. 6505 Regional Street
Dublin, CA 94568
15. 722 Jamacha Road
El Cajon, CA 92019
16. 26652 Portola Pkwy
Foothill Ranch, CA 92610
17. 5525 Stevenson Blvd.
Fremont, CA 94538
18. 2765 W. Shaw
Fresno, CA 93711
19. 12007 Harbor Boulevard
Garden Grove, CA 92840
20. 2100 Golden Centre Lane
Gold River, CA 95670
21. 5690 Calle Real
Goleta, CA 93117

22. 15433 Culver Drive
Irvine, CA 92604
23. 5628 Lake Murray Blvd.
La Mesa, CA 91942
24. 25322 Cabot Road
Laguna Hills, CA 92653
25. 5305 Clark Avenue
Lakewood, CA 90712
26. 124 Great Mall Dr.
Milpitas, CA 95035
27. 2045-D W. Briggsmore Avenue
Modesto, CA 95350
28. 2980 Plaza Bonita
National City, CA 91950
29. 25261 N. The Old Road
Newhall, CA 91321
30. 18711 Devonshire Street
Northridge, CA 91324
31. 12850 Norwalk Blvd.
Norwalk, CA 90651
32. 2485 Vista Way
Oceanside, CA 92054
33. 4492 Ontario Mills Pkwy.
Ontario, CA 91764
34. 2341 Lockwood Street
Oxnard, CA 93030
35. 72-220 Hwy. 111
Palm Desert, CA 92260
36. 1061 W. Ave. P
Palmdale, CA 93551
37. 1361 Fitzgerald Dr.
Pinole, CA 94564
38. 150 A Longbrook Way
Pleasant Hill, CA 94523
39. 14701 Pomerado Road
Poway, CA 92064
40. 910 Dana Drive
Redding, CA 96003
41. 4619 Redwood Drive
Rohnert Park, CA 94928
42. 181 N. Sunrise Ave.
Roseville, CA 95661
43. 1340 Howe Ave.
Sacramento, CA 95825

44. 1401 North Davis Road
Salinas, CA 93907
45. 620 E. Hospitality Lane
San Bernardino, CA 92408
46. 1640 Camino Del Rio N., Suite 1
San Diego, CA 92108
47. 4196 Clairemont Mesa Blvd.
San Diego, CA 92117
48. 694 Blossom Hill Rd.
San Jose, CA 95123
49. 196 Donahue Street
Sausalito, CA 94965
50. 1243 W. March Lane
Stockton, CA 95207
51. 40275 Winchester Rd.
Temecula, CA 92591
52. 137 E. Thousand Oaks Blvd.
Thousand Oaks, CA 91360
53. 21880 Hawthorne Blvd.
Torrance, CA 90503
54. 530 N. Mountain Avenue
Upland, CA 91786
55. 521 Davis St.
Vacaville, CA 95688
56. 12400 - B Amargosa Rd.
Victorville, CA 92392

EXHIBIT B

1. Roy's - Pebble Beach
The Inn at Spanish Bay
2700 Seventeen Mile Dr.
Pebble Beach, CA 93953
2. Roy's - Newport Beach
453 Newport Center Drive
Newport Beach, CA 92660
3. Roy's - Rancho Mirage
71959 Highway 111
Rancho Mirage, CA 92270
4. Roy's - LaJolla
8670 Genessee Avenue
San Diego, CA 92122
5. Roy's - San Francisco
101 2nd St.
San Francisco, CA 94105

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 25249.5 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, 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 prohibitions from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical 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 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, only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business caused 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 12999). A private party may not pursue an enforcement action directly in violation of 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 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 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 be adequately tested as required [Health and Safety Code 25249.5].

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 3 Park Plaza, Suite 2030, Irvine, California 92614.

I SERVED THE FOLLOWING:

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

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: February 10, 2003

Place of Mailing: Irvine, California

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

Paul E. Avery, President
Chris T. Sullivan, CEO
Outback Steakhouse, Inc.
Outback Steakhouse of Florida, Inc.
2202 N. West Shore Blvd., 5th Floor
Tampa, FL 33607

A. William III, President
Roy's Restaurants
2202 N. West Shore Blvd., 5th Floor
Tampa, FL 33607

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

Los Angeles County District Attorney
210 W. Temple Street, 18th Floor
Los Angeles, CA 90012

Sacramento County DA
P.O. Box 749
Sacramento, CA 95812

San Diego County District Attorney
330 Broadway
San Diego, CA 92101

San Diego City Attorney
1200 3rd Ave. Ste. 1620
San Diego, CA 92101

Los Angeles City Attorney
200 N. Main St. N.E.
Los Angeles, CA 90012

Humboldt County DA
825 5th Street
Eureka, CA 95501

Shasta County District Attorney
1525 Court Street
Redding, CA 96001-1632

4. The information referred to in paragraph 3 is as follows; by investigation of the locations referenced in the Notice plaintiff 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 serving of the specified food at that facility);
- (2) the violator has more than nine employees;
- (3) the violator permits the serving of the specified food at the locations referenced in the Notice;
- (4) as to the locations referenced in the Notice, Plaintiff examined the major entrances to the facilities, the reception area and the menus in use at the facilities;
- (5) at none of the locations did Plaintiff see any 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 February 7, 2003.

Anthony G. Graham

San Mateo District Attorney
1050 Mission Road
South San Francisco, CA 94080

Riverside County DA
4075 Main St., 1st Fl.
Riverside, CA 92501

Sonoma County DA
600 Administrative Dr.
Santa Rosa, CA 95403

San Jose City Attorney
151 W. Mission St.
San Jose, CA 95110

Yolo County D A
301 2nd Street
Woodland, CA 95695

El Dorado County DA
1360 Johnson Blvd. #105
South Lake Tahoe, CA 96150

Napa County DA
931 Parkway Mall
Napa, CA 94559

Inyo County DA
386 W. Line Street
Bishop, CA 93514

Lake County DA
255 N. Forbes St.
Lakeport, CA 95453

Yuba County DA
215 5th Street
Marysville, CA 95901

Stanislaus County DA
300 Starr Avenue
Turlock, CA 95380

District Attorney
14227 Road 28
Madera, CA 93638

Santa Clara County DA
2645 Zanker Road
San Jose, CA 95134

Mariposa County DA
P.O. Box 748
Mariposa, CA 95338

Nevada County DA
201 Church Street, Suite 8
Nevada City, CA 95959

San Luis Obispo County DA

Marin County DA
3501 Civic Center Dr. #130
San Rafael, CA 94903

Santa Barbara County DA
1105 Santa Barbara St.
Santa Barbara, CA 93101

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

Contra Costa County DA
727 Court Street
Martinez, CA 94553

District Attorney
1430 Freedom Blvd.
Watsonville, CA 95076

Ventura County DA
800 South Victoria Avenue
Ventura, CA 95695

Kern County DA
2100 College Avenue
Bakersfield, CA 93305

San Joaquin DA
225 W. Elm Street #C
Lodi, CA 95240

Mendocino County DA
700 S. Franklin St.
Forest Bragg, CA 94537

Solano County DA
321 Tuolumne Street
Valejo, CA 94590

Butte County DA
25 County Center Drive
Oroville, CA 95695

Orange County District Attorney
700 Civic Center Dr. W., 2nd Fl.
Santa Ana, CA 92701

Sutter County DA
446 Second Street
Yuba City, CA 95991

Santa Cruz County DA
701 Ocean Street
Santa Cruz, CA 95061

Alameda County DA
1225 Fallon Street
Oakland, CA 94612

Del Norte County DA

1050 Monterey Street, Rm. 450
San Luis Obispo, CA 93408

450 H Street
Crescent City, CA 95531

San Bernardino County DA
316 N. Mountain View Ave.
San Bernardino, CA 92415

Mono County DA
P.O. Box 617
Bridgeport, CA 93517

Siskiyou County DA
P.O. Box 986
Yreka, CA 96097

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

Merced County DA
445 I Street
Los Banos CA 93635

Santa Rosa D.A.
111 N Pythian Rd
Santa Rosa CA 95409

Mendoc County DA
204 S Court Street
Alturas CA 96101

Lake County District Atty
6850 Old Highway 53
Clearlake CA 95422

Santa Monica DA
1725 Main St #228
Santa Monica CA 90401

Riverside DA
4077 Main Street
Riverside CA 92501

Napa County DA
931 Parkway Mall
Napa CA 94559

Santa Clara DA
2645 Zanker Rd
San Jose CA 95134

Santa Clara DA
2645 Zanker Rd
San Jose CA 95134

Pasadena DA
300 E Walnut St #103
Pasadena CA 91101

Solano County DA
321 Tuolumne St
Vallejo CA 94590

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

Dated: February 10, 2003


