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January 23, 2002

Kamran Ghalchi, Esq.
16161 Ventura Blvd. # 663
Encino, California 91436

RE: Citizens for Responsible Business Proposition 65 Notices
(Auto Manufacturers)

Dear Mr. Ghalchi:

The Attorney General recently received sixty-day notices from your office, on behalf of Citizens for Responsible Business, Inc., in which you allege that certain auto manufacturers have failed to provide required warnings under Proposition 65, Health and Safety Code section 25249.5, et seq. (the "Act"). These notices were served on December 21, 2001, some of roughly 3,500 notices served on the Attorney General between December 21, 2001 and December 31, 2001.

As you know, the Legislature passed, and the Governor approved, SB 471, which adopted certain changes in Proposition 65. These changes include the new requirement that notices alleging violations of the warning requirement include a certificate of merit, which provides certain information substantiating the claims made in the notice. This requirement took effect for notices served on or after January 1, 2002. The Attorney General supported this legislation, because it helps assure that noticing parties have adequately investigated their claims before providing the notice.

In our experience, we have found that responsible groups doing this type of work had engaged in an investigation similar to that required by SB 471, and therefore would not be especially burdened by the new requirements. Unfortunately, some groups have not always performed sufficient investigation before providing these notices. You have provided a huge volume of notices very shortly before the effective date of the new certificate of merit requirements. We hope that this was not done in an effort to avoid conducting the type of investigation that would be necessary to provide an adequate certificate of merit, but the timing and volume of your notices could support that inference.

Although the Certificate of Merit requirement was not in effect on the date of your

notices, the provisions of the Code of Civil Procedure and other legal remedies already exist to address any civil actions that are filed without adequate basis to proceed. We trust that you are aware of such requirements, and will assure that any actions you take meet all applicable legal standards. Moreover, if actions are filed pursuant to these notices, they will be subject to the newly-required settlement review procedures. Under these provisions, no settlements can be approved unless the court finds that any warning complies with the law, any civil penalty is reasonable, and any award of attorneys' fees is reasonable under California law. Any settlements must be provided to the Attorney General for review, and the Attorney General may appear in court concerning the settlements.

Accordingly, we have a number of questions concerning the support for the allegations in your notice, the answers to which are important to our ability to evaluate whether the Attorney General should commence enforcement action on them. We trust that you have obtained this information as part of your investigation, and will provide it to us:

1. Consumer Product Exposure Nos. 1 and 2.

The first two consumer product exposures that you allege apply to “gasoline (wholly vaporized)” and “benzene” that escape from gas tanks of vehicles through the “tank filler necks or intake tubes through which said automobiles or motor vehicles are filled up or replenished with gasoline by consumers or users of automobiles or motor vehicles. . .”

The Act requires that sellers of gasoline provide warnings with respect to these same exposures that are the subject of this portion of your notice, and in our experience these warnings are prevalent at gas stations throughout the State of California. Since consumers are already receiving a warning as to the chemicals listed in this notice each time that they refuel their vehicles, please describe your reasons for believing that they should receive an additional warning from the manufacturer of the vehicle. Given the facts as we currently understand them, it appears probable that no additional warning is required. It also appears that the provision of additional warnings, even if they are required, would provide a very minimal benefit to the public, and therefore should not result in the award of any significant penalties, attorneys' fees or other payments to you or your client.

3. Consumer Product Exposure No. 3.

The third alleged consumer product exposure applies to exposures to vehicle exhaust, but only to “exposures that occur inside the automobile or motor vehicle parking garages or lots adjoining or inside residential structures or buildings.” Please provide us with any evidence you may have that evaluates the risks associated with the inhalation of vehicle exhaust in residential

garages and parking areas. While the provisions of SB 471 do not apply to your notice, the provisions of Code of Civil Procedure section 128.7 require that you conduct a good faith analysis of these exposures and their purported risks prior to filing an action in which you allege that these exposures are a violation of Proposition 65. We would appreciate receiving the results of any such analysis that you have performed.

4. Consumer Product Exposure No. 4 and 5.

These alleged consumer exposures involve exposures to lead, lead compounds and motor oils (used engine oils) that occur when consumers service their batteries and change the oil on their vehicles. Please provide us with any evidence you may have that evaluates the risks associated with these exposures. In addition please provide us with you analysis as to whether consumers are receiving warnings as to these alleged exposures from other sources.

5. Environmental Exposure No. 1 and 2.

The first alleged environmental exposure alleged in the notices consists of environmental exposures to unleaded gasoline (wholly vaporized) and benzene that occur “within a two (2) foot radius of the motor vehicles’ or automobiles’ gasoline tank door/cap.” The second alleged environmental exposure involves exposures to benzene that occur when motorists refuel their vehicles. Since these exposures occur only when the gas cap is opened, it appears that virtually every exposure will occur at a gas station or other place where gasoline is sold. As noted above, the Act requires that sellers of gasoline provide warnings with respect to these same exposures, and these warnings are prevalent throughout the state of California. Given the fact that citizens are already receiving a warning as to the chemicals listed in this notice each time that they refuel their vehicles, it appears that you may not have alleged a violation of the Act. If you have information to the contrary, please supply it to us. Moreover, as noted above, the provision of additional warnings, even if they are required, would result in a minimal benefit to the public.

6. Environmental Exposure No. 3.

Your third alleged environmental exposure is like your third alleged consumer exposure; it alleges exposures to vehicle exhaust and related chemicals that occur “inside enclosed or partially enclosed automobile or motor vehicle parking garages or lots inside or adjoining residential structures or residential buildings.” Please provide us with any evidence you may have that evaluates the risks to the public associated with the inhalation of vehicle exhaust in residential garages and parking areas.

7. Environmental Exposure No. 4 and 5.

Your fourth and fifth alleged environmental exposures are similar to your fourth and fifth consumer product exposures; you allege that members of the public are exposed to mineral oil (used engine oils), lead, and lead compounds when they service their vehicles. Please provide us with any evidence you may have that evaluates the risks associated with these exposures. In addition please provide us with you analysis as to whether the affected public is receiving warnings as to these alleged exposures from other sources.

8. Ingestion of Air.

Your notice also makes several references to the “ingestion of air.” The notice does not reasonably specify what you mean by “ingestion of air” and we believe that it is deficient in this regard. Please provide us with any evidence you may have that evaluates the risks associated with the “ingestion of air” that contains the chemicals listed in your notices.

9. Premature and inappropriate settlement offers.

Your notice letter also discusses the terms upon which you will settle the cases that may result from the notices that you have given. For example, you suggest that the automakers who receive the notice should accomplish a complete elimination of all exposures to vehicle exhaust and gasoline vapors.

We remind you that you have no authority to proceed in the interest of the public under Proposition 65 until 60 days (plus appropriate time for mail service) have passed and no public enforcement official has commenced an action against the violations. Accordingly, at this time, you have no authority to represent the public or to enter into any settlement of any kind on behalf of the public. All of your communications to any of the parties should make clear that you represent only Citizens for Responsible Business, Inc., not the State of California, or the general public.

Moreover, as noted at the beginning of this letter, if you do receive the right to proceed in the public interest, any settlement that you reach will require court approval, and our office will have the right to comment on the terms of the proposed settlement.

This letter should not be considered an exclusive list of our concerns, and the lack of comment on a particular claim should not be construed to imply that the claim, or the discussion of the claim in the notice, is valid.

Please provide us with the information requested above no later than January 30, 2002. Thank you for your attention to this matter.

Kamran Ghalchi, Esq.
January 23, 2002
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Sincerely,

EDWARD G. WEIL
Deputy Attorney General

For BILL LOCKYER
Attorney General