

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

INTERNATIONAL PAVEMENT SOLUTIONS, INC., ASPHALT
FABRIC AND ENGINEERING, INC., COMMERCIAL PAVING &
COATING, (Additional Parties Attachment form is attached)

**ENDORSED
FILED
ALAMEDA COUNTY**

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Consumer Advocacy Group, Inc., in the interest of, and on Behalf of the
Public,

DEC 27 2007

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of the State of California for the County of Alameda
René C. Davidson Alameda County Courthouse
1225 Fallon St., Oakland, CA 94612

CASE NUMBER (Número del Caso): **07363359**

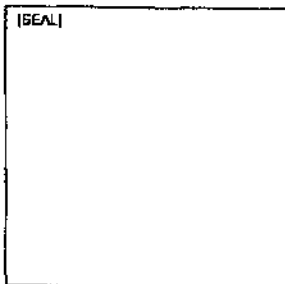
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
REUBEN YEROUSHALMI, YEROUSHALMI & ASSOCIATES, 3700 WILSHIRE BLVD., SUITE 480,
LOS ANGELES, CA 90010, 213-382-3183

Tasha Perry

DATE: DEC 27 2007
(Fecha) Pat S. Sweeten Clerk, by Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):
 - under: CCP 416.10 (corporation) CCP 416.60 (minor)
 - CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 - CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 - other (specify):
- 4. by personal delivery on (date):

SHORT TITLE:

Consumer Advocacy Group, Inc. v. Int'l Pavement Solutions, Inc.

CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party):

Plaintiff Defendant Cross-Complainant Cross-Defendant

CREW INC., CALHOUN BROTHERS GRADING & PAVING, CITY SERVICE CONTRACTING INC., GUTAYA EQUIPMENT INC., JD PAVING INC., FAGUNDES & SON INC., J H FITZMAURICE INC, BEN'S ASPHALT, HDEC INC, KERN ASPHALT PAVING & SEALING, NORMAN B. HOUGE INC., PACIFIC SURFACING INC., SHAMROCK GROUP INC., SECURITY PAVING COMPANY INC., VINCI PACIFIC CORPORATION, WATTIS CONSTRUCTION CO. INC., WT COOK CONSTRUCTION, A & B ASPHALT, G BORLOTOTOO & COMPANY, COSTAL PAVING INC., TEICHARD INC., BOND BLACKTOP, ROAD WORKS INC. AND DOES 1-1,000

Page 2 of 2

1 REUBEN YEROUSHALMI (SBN 193981)
2 DANIEL D. CHO (SBN 105409)
3 YEROUSHALMI & ASSOCIATES
3700 WILSHIRE BLVD., SUITE 480
4 LOS ANGELES, CA 90010
Telephone: 213-382-3183
5 Facsimile: 213-382-3430
Email: lawfirm@yeroushalmi.com

6 Attorneys for Plaintiffs,
7 Consumer Advocacy Group, Inc.

**ENDORSED
FILED
ALAMEDA COUNTY**

DEC 27 2007

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA--UNLIMITED *RG* 07363352

11 CONSUMER ADVOCACY)
12 GROUP, INC., in the interest of,)
13 and on Behalf of the Public,)

14 Plaintiffs,)
15)

16 v.)

17 INTERNATIONAL PAVEMENT)
18 SOLUTIONS, INC., ASPHALT FABRIC)
19 AND ENGINEERING, INC., COMMERCIAL)
20 PAVING & COATING, CREW INC.,)
21 CALHOUN BROTHERS GRADING &)
22 PAVING, CITY SERVICE CONTRACTING,)
23 INC., GUTAYA EQUIPMENT INC., JD)
24 PAVING INC., FAGUNDES & SON INC.,)
25 J H FITZMAURICE INC, BEN'S ASPHALT,)
26 HDEC INC, KERN ASPHALT PAVING)
27 & SEALING, NORMAN B. HOUGE INC.,)
28 PACIFIC SURFACING INC., SHAMROCK)
GROUP INC., SECURITY PAVING)
COMPANY INC., VINCI PACIFIC)
CORPORATION, WATTIS)
CONSTRUCTION CO. INC., WT COOK)
CONSTRUCTION, A & B ASPHALT,)
G BORLOTOTOO & COMPANY,)
COSTAL PAVING INC., TEICHARD INC.,)

COMPLAINT FOR PENALTY,
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act, 1986 (commencing with Health and
Safety Code sections 25249.5, et seq.)

BY FAX

1 BOND BLACKTOP, ROAD WORKS INC.)
2 AND DOES 1-1,000,)
3)
4 Defendants.)
5)

6 **BACKGROUND AND PRELIMINARY FACTS**

- 7 1. In 1986, California voters approved an initiative to address growing concerns about
8 exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic
9 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5 et seq.
10 (“Proposition 65”), helps to protect California’s drinking water sources from
11 contamination, to allow consumers to make informed choices about the products they
12 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
- 13 2. Proposition 65 requires the Governor of California to publish a list of chemicals known to
14 the state to cause cancer, birth defects, or other reproductive harm (“Proposition 65-
15 Listed Chemicals”). (Health & Saf. Code, § 25249.8.) The list, which the Governor
16 updates at least once a year, contains over 550 chemicals. Proposition 65 imposes
17 warning requirements and other controls that apply to Proposition 65-Listed Chemicals.
- 18 3. All businesses with ten or more employees that operate or sell products in California
19 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
20 from knowingly discharging Proposition 65-Listed Chemicals into sources of drinking
21 water (Health & Saf. Code, § 25249.5), and (2) required to provide “clear and
22 reasonable” warnings before exposing a person, knowingly and intentionally, to a
23 Proposition 65-Listed Chemical (Health & Saf. Code, § 25249.6.)
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- 1 4. Plaintiff, Consumer Advocacy Group, Inc. ("Plaintiff") is a non-profit corporation
2 qualified to do business in the State of California. It brings this action in the public
3 interest as defined under Health and Safety Code section 25249.7, subdivision (d).
4
- 5 5. Defendants International Pavement Solutions, Inc., Asphalt Fabric and Engineering, Inc.,
6 Commercial Paving & Coating, Crew Inc., Calhoun Brothers Grading & Paving, City
7 Service Contracting Inc., Gutaya Equipment Inc., JD Paving Inc., Fagundes & Son Inc., J
8 H Fitzmaurice Inc, Ben's Asphalt, HDEC Inc, Kern Asphalt Paving & Sealing, Norman
9 B. Houge Inc., Pacific Surfacing Inc., Shamrock Group Inc., Security Paving Company
10 Inc., Vinci Pacific Corporation, Wattis Construction Co. Inc., WT Cook Construction, A
11 & B Asphalt, G Borlototoo & Company; Costal Paving Inc., Teichard Inc., Bond
12 Blacktop, Road Works Inc., AND DOES 1-1,000 (hereinafter referred to collectively as
13 "Defendants"), are and at all times mentioned herein have been qualified to do business
14 in the State of California, and at all times mentioned herein have conducted business
15 within the State of California.
16
- 17 6. Plaintiffs are ignorant of the true names and capacities of defendants sued as Does 1,000,
18 and therefore sue these defendants by such fictitious names. Plaintiffs will amend this
19 complaint to allege their true names and capacities when ascertained. Plaintiffs are
20 informed, believe, and thereon allege that each of the fictitiously named defendants is
21 responsible in some manner for the occurrences herein alleged and the damages caused
22 thereby.
23
- 24 7. At all times mentioned herein, "Defendants" include International Pavement Solutions,
25 Inc., Asphalt Fabric and Engineering, Inc., Commercial Paving & Coating, Crew Inc.,
26 Calhoun Brothers Grading & Paving, City Service Contracting Inc., Gutaya Equipment
27
28

1 Inc., JD Paving Inc., Fagundes & Son Inc., J H Fitzmaurice Inc, Ben's Asphalt, HDEC
2 Inc, Kern Asphalt Paving & Sealing, Norman B. Houge Inc., Pacific Surfacing Inc.,
3 Shamrock Group Inc., Security Paving Company Inc., Vinci Pacific Corporation, Wattis
4 Construction Co. Inc., WT Cook Construction, A & B Asphalt, G Borlototoo &
5 Company; Costal Paving Inc., Teichard Inc., Bond Blacktop, Road Works Inc. and Does
6
7 1 through 1,000.

8 8. At all relevant times, each Defendant was a person doing business within the meaning of
9 Health and Safety Code section 25249.11, subdivision (a). Plaintiffs are informed,
10 believe, and thereon allege that at all times mentioned herein each Defendant has had 10
11 or more employees.

12
13 9. In 2000 and 2001, Plaintiff conducted research, from which it identified an industry-wide
14 practice among California companies involved in paving operations, of exposing,
15 knowingly and intentionally, persons to asphalt paving products without first providing
16 clear and reasonable warnings of such to the exposed persons prior to exposure. Asphalt
17 is extremely toxic material, containing numerous Proposition 65-Listed Chemicals.
18

19 10. Defendants have been intentionally exposing persons, by deliberately using Asphalt, to
20 the constituent chemicals of Asphalt and related products and materials, including Hot
21 Mix Asphalt, as listed in Paragraph 52 and designated by the State of California to cause
22 cancer, birth defects, and reproductive toxicity, pursuant to the Code of Civil Regulations
23 (hereinafter "CCR"), Title 22, section 12000, without first giving a clear and reasonable
24 warning of such to the exposed persons, in violation of Health & Safety Code, § 25249.6
25 as specifically delineated at CCR, Title 22, section 12601, et seq.
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1 11. Plaintiff mailed a separate Proposition 65 60-day Notice of intent to sue to Defendants
2 International Pavement Solutions, Inc., Asphalt Fabric and Engineering, Inc.,
3 Commercial Paving & Coating, Crew Inc., Calhoun Brothers Grading & Paving, City
4 Service Contracting Inc., Gutaya Equipment Inc., JD Paving Inc., Fagundes & Son Inc., J
5 H Fitzmaurice Inc, Ben's Asphalt, HDEC Inc, Kern Asphalt Paving & Sealing, Norman
6 B. Houge Inc., Pacific Surfacing Inc., Shamrock Group Inc., Security Paving Company
7 Inc., Vinci Pacific Corporation, Wattis Construction Co. Inc., WT Cook Construction, A
8 & B Asphalt, G Borlototoo & Company, Costal Paving Inc., Teichard Inc., Bond
9 Blacktop, and Road Works Inc., respectively. Such Notices stated that each respective
10 defendant, by failing to warn persons of exposures to Proposition 65-Listed Chemicals
11 before exposing them to Proposition 65-Listed Chemicals, had violated Proposition 65.
12 Copies of the notices were mailed to the California Attorney General ("Attorney
13 General") and the County District Attorneys and City Attorneys for each city containing
14 a population of at least 750,000 people, for the locations within which Defendants have
15 allegedly violated Health and Safety Code sections 25249.5, et seq. and CCR, Title 22,
16 sections 12000 through 14000.
17

18
19
20 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
21 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
22 those given by statute to other trial courts. Plaintiffs bring this lawsuit under statutes that
23 do not specify any other basis of jurisdiction.
24

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1
2
3 **FIRST CAUSE OF ACTION BY CONSUMER ADVOCACY GROUP, INC AND**
4 **AGAINST DEFENDANTS INTERNATIONAL PAVEMENT SOLUTIONS, INC.,**
5 **ASPHALT FABRIC AND ENGINEERING, INC., COMMERCIAL PAVING &**
6 **COATING, CREW INC., CALHOUN BROTHERS GRADING & PAVING, CITY**
7 **SERVICE CONTRACTING INC., GUTAYA EQUIPMENT INC., JD PAVING INC.,**
8 **FAGUNDES & SON INC., J H FITZMAURICE INC, BEN'S ASPHALT, HDEC INC,**
9 **KERN ASPHALT PAVING & SEALING, NORMAN B. HOUGE INC., PACIFIC**
10 **SURFACING INC., SHAMROCK GROUP INC., SECURITY PAVING COMPANY INC.,**
11 **VINCI PACIFIC CORPORATION, WATTIS CONSTRUCTION CO. INC., WT COOK**
12 **CONSTRUCTION, A & B ASPHALT, G BORLOTOTOO & COMPANY, COSTAL**
13 **PAVING INC., TEICHARD INC., BOND BLACKTOP, ROAD WORKS INC. AND ALL**
14 **DOE DEFENDANTS FOR VIOLATIONS OF PROPOSITION 65, THE SAFE**
15 **DRINKING WATER AND TOXIC ENFORCEMENT ACT, 1986 (COMMENCING**
16 **WITH HEALTH AND SAFETY CODE SECTIONS 25249.5, et seq.**

17
18 13. Plaintiff CAG repeats and incorporates by reference paragraphs 1 through 12 of this
19 complaint as though fully set forth herein.

20
21 14. Defendants are and at all times mentioned herein have been engaged in the business of
22 the paving of roads, berms, pathways, parking lots, and other surfaces, or the
23 manufacturing, selling, storing, distributing, installing, and laying of Asphalt products.

24
25 15. Defendants have been exposing persons, knowingly and intentionally, by deliberately
26 using asphalt, to the constituent Proposition 65-Listed Chemicals of asphalt, without first
27 giving clear and reasonable warning of such to the exposed persons before the time of
28 exposure. (Health & Saf. Code, § 25249.6.)

16. On or about August 23, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
sue to International Pavement Solutions, Inc alleging the facts found in Paragraph 10 of
this pleading.

- 1 17. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
2 to Asphalt Fabric and Engineering, Inc., alleging the facts found in Paragraph 10 of this
3 pleading.
4
- 5 18. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
6 to Commercial Paving & Coating alleging the facts found in Paragraph 10 of this
7 pleading.
8
- 9 19. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
10 to Crew Inc. alleging the facts found in Paragraph 10 of this pleading.
11
- 12 20. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
13 sue to Calhoun Brothers Grading & Paving alleging the facts found in Paragraph 10 of
14 this pleading.
15
- 16 21. On or about August 23, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
17 sue to City Service Contracting Inc. alleging the facts found in Paragraph 10 of this
18 pleading.
19
- 20 22. On or about June 1, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to
21 Gutaya Equipment Inc. alleging the facts found in Paragraph 10 of this pleading.
22
- 23 23. On or about June 1, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to
24 JD Paving Inc. alleging the facts found in Paragraph 10 of this pleading.
25
- 26 24. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
27 sue to Fagundes & Son Inc. alleging the facts found in Paragraph 10 of this pleading.
28
- 25 25. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
sue to J H Fitzmaurice Inc. alleging the facts found in Paragraph 10 of this pleading.

- 1 26. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
2 to Ben's Asphalt alleging the facts found in Paragraph 10 of this pleading.
- 3 27. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
4 sue to HDEC Inc alleging the facts found in Paragraph 10 of this pleading.
- 5 28. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
6 sue to Kern Asphalt Paving & Sealing alleging the facts found in Paragraph 10 of this
7 pleading.
- 8 29. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
9 sue to Norman B. Houge Inc. alleging the facts found in Paragraph 10 of this pleading.
- 10 30. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
11 sue to Pacific Surfacing Inc. alleging the facts found in Paragraph 10 of this pleading.
- 12 31. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
13 to Shamrock Group Inc. alleging the facts found in Paragraph 10 of this pleading.
- 14 32. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
15 to Security Paving Company Inc. alleging the facts found in Paragraph 10 of this
16 pleading
- 17 33. On or about June 1, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to
18 Vinci Pacific Corporation alleging the facts found in Paragraph 10 of this pleading
- 19 34. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
20 sue to Wattis Construction Co. Inc. alleging the facts found in Paragraph 10 of this
21 pleading.
- 22 35. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
23 sue to WT Cook Construction alleging the facts found in Paragraph 10 of this pleading.
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1 36. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
2 sue to A & B Asphalt alleging the facts found in Paragraph 10 of this pleading.

3 37. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
4 sue to G Borlototoo & Company alleging the facts found in Paragraph 10 of this
5 pleading.
6

7 38. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
8 sue to Costal Paving Inc. alleging the facts found in Paragraph 10 of this pleading.

9 39. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
10 sue to Teichard Inc. alleging the facts found in Paragraph 10 of this pleading.
11

12 40. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
13 sue to Bond Blacktop alleging the facts found in Paragraph 10 of this pleading.

14 41. On or about August 23, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to
15 sue to Road Works Inc. alleging the facts found in Paragraph 10 of this pleading.
16

17 42. Each Proposition 65 60-Day Notice of intent to sue listed above included a certificate of
18 merit executed by the attorney for the noticing party, Plaintiff. The certificate of merit
19 stated that the attorney for Plaintiff who executed the certificate had consulted with at
20 least one person with relevant and appropriate expertise who had reviewed data regarding
21 the exposure to Proposition 65-Listed Chemicals that are the subjects of the action.
22 Based on that information, the attorney for Plaintiff who executed the certificate believed
23 there was a reasonable and meritorious case for this private action. The attorney for
24 Plaintiff attached to the certificate of merit served on the Attorney General information
25 sufficient to establish the basis of the certificate of merit.
26
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1 43. Plaintiff is commencing this action more than sixty days (plus five calendar days because
2 Plaintiff mailed the notices and the place of mailing and the place of address were within
3 California) from the date that Plaintiff gave notice of the alleged violations of Proposition
4 65 to each respective named defendant, the Attorney General, and applicable district
5 attorneys and city attorneys in whose jurisdictions the violations allegedly occurred.
6

7 44. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
8 any applicable district attorney or city attorney has commenced and is diligently
9 prosecuting an action against the violation.
10

11 ENVIRONMENTAL EXPOSURE

12 45. Between three years before the sending of each respective Proposition 65 60-Day Notice
13 of intent to sue and the present, in the normal course of business, Defendants conducted
14 operations involving, relating to, or leading to, the paving of roads, pathways, berms,
15 parking lots, and other surfaces. Defendants have been knowingly and intentionally
16 exposing reasonably foreseeable members of the public, including neighbors and
17 residents, passersby, motorists, engineers, and inspectors not in the direct employ of
18 violators and found within a 100 foot radius of where paving work has been performed,
19 using products containing the constituent chemicals of Asphalt and related products and
20 materials, including Hot Mix Asphalt, as listed in Paragraph 52 of this Complaint and
21 designated by the State of California to cause cancer, birth defects, and reproductive
22 toxicity, pursuant to CCR, Title 22, section 12000, without first giving clear and
23 reasonable warning of such to the exposed persons. Health & Safety Code, § 25249.6.
24

25
26 46. The sources of exposures are the constituent chemicals of Asphalt and related products
27 and materials, and the use of such, as listed in Paragraph 62. The locations of the
28

1 exposures include the areas within a 100 foot radius of the violators' places of business,
2 involving activities including whereby asphalt cement, a crude oil product that has been
3 refined, and aggregate have been heated and mixed to create Asphalt or Hot Mix Asphalt,
4 to the area along and within 100 feet of the route traveled between said places of business
5 and the addresses where paving materials have been stored and paving work has been
6 performed, whereby the Asphalt has been transported, and the area within a 50 foot
7 radius to such addresses where paving work has been performed, including the street,
8 sidewalks, and pathways within a 100 foot radius to said addresses, the vicinity of work
9 vehicles and the immediately neighboring areas affected by the constituent chemicals of
10 Asphalt and related products and materials, as listed in Paragraph 62, Hot Mix Asphalt,
11 Asphalt smoke, diesel exhaust, and associated fumes that have been breathed in via the
12 ambient air by the exposed persons causing contact with their mouths, throats, esophagi,
13 and lungs.
14
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16

17 47. The route of exposure for environmental exposures has been the inhalation contact
18 described above. Exposures took place in the California counties whose District
19 Attorneys received copies of the operative 60-Day Notices.
20

21 OCCUPATIONAL EXPOSURE

22 48. Between three years before the sending of each respective Proposition 65 60-Day Notice
23 of intent to sue and the present, in the normal course of business, Defendants by
24 manufacturing, selling, storing, distributing, installing, and laying Asphalt products, have
25 been knowingly and intentionally exposing their employees to the constituent chemicals
26 of Asphalt and related products and materials, including Hot Mix Asphalt, as listed in
27 Paragraph 52 and designated by the State of California to cause cancer, birth defects, and
28

1 reproductive toxicity, pursuant to CCR, Title 22, section 12000, without first giving clear
2 and reasonable warning of such to their employees. Health & Safety Code, § 25249.6 as
3 delineated at CCR, Title 22, section 12601, et seq.
4

5 49. The sources of exposures include the constituent chemicals of Asphalt and related
6 products and materials, and the use of Asphalt, including Hot Mix Asphalt, as listed in
7 Paragraph 52. The employees of the Defendants include, but are not limited to, paving
8 contractors, flag persons, drivers, truck drivers, paving machine operators and workers
9 involved in grading and raking Asphalt at locations where Asphalt is applied. Exposures
10 occurred in locations including the storage facilities/garage areas where the Asphalt,
11 including Asphalt cement, a crude oil product, were stored or made at the violators'
12 places of business, as referenced above, on and in the vicinity of work vehicles
13 transporting Asphalt, including Hot Mix Asphalt, the addresses where paving
14 installations were performed, and the areas along the routes traveled between said places
15 of business and the addresses where paving work was performed, by which the Asphalt,
16 including Hot Mix Asphalt, was transported. The route of exposure for occupational
17 exposures to the chemicals listed in Paragraph 52, by the affected persons has been from
18 Asphalt, including Hot Mix Asphalt, Asphalt smoke, diesel smoke, and associated fumes
19 that have been breathed in via the ambient air by the exposed persons (and was a direct
20 result of participating in the process by which Asphalt is applied to surfaces, or being in
21 the vicinity of where hot Asphalt was mixed, heated, or transported) causing inhalation
22 contact with their mouths, throats, esophagi, and lungs. Defendants are also responsible
23 for a route of exposure of dermal contact due to their employees touching the Asphalt
24 with their bare skin while mixing, heating, transporting, and applying the Asphalt,
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1 including hot Asphalt, to surfaces at work locations, as well as employees touching the
2 Asphalt by inadvertently allowing their work gloves, which had touched the Asphalt, to
3 touch their bare skin. Employees also sustained dermal contact when moving the
4 Asphalt, including hot Asphalt, in and out of the storage facilities and garage areas where
5 the Asphalt has been stored at Defendants' places of business. Exposures occurred in the
6 California counties whose district attorneys received copies of the operative notices.
7

8 **CONSUMER PRODUCT EXPOSURE**

9
10 50. Between three years before the sending of each respective Proposition 65 60-Day Notice
11 of intent to sue and the present, in the normal course of business, Defendants by
12 manufacturing, selling, storing, distributing, installing, and laying Asphalt products, have
13 been knowingly and intentionally exposing their customers to the constituent chemicals
14 of Asphalt and related products and materials, including Hot Mix Asphalt, as listed in
15 Paragraph 52 and designated by the State of California to cause cancer, birth defects, and
16 reproductive toxicity, pursuant to CCR, Title 22, section 12000, without first giving clear
17 and reasonable warning of such to their customers. Health & Saf. Code, § 25249.6 and as
18 delineated at CCR, Title 22, section 12601, et seq.
19

20
21 51. The sources of exposures include the constituent chemicals of Asphalt and related
22 products and materials, including Hot Mix Asphalt, as listed in Paragraph 52. The
23 customers of the Defendants include persons who directly contracted with Defendants to
24 perform paving services, and the employees, families, and other persons associated with
25 the persons who directly contracted with Defendants, or who sold products containing
26 Asphalt to members of the public. Exposures occurred in locations where members of
27 the public handled Defendant's products or where parties, contracted by the public, laid,
28

1 or otherwise permanently affixed to the earth's surface, Asphalt. The route of exposure
2 to the chemicals listed in Paragraph 52, by the affected persons, has been by inhalation of
3 Asphalt fumes, including Hot Mix Asphalt, Asphalt smoke, and associated fumes, and
4 particulate matter and other airborne constituents, that have been breathed in via the
5 ambient air by the exposed persons, and was a direct result of purchasing the products
6 and services whereby such Asphalt was applied to surfaces, and being near where hot
7 Asphalt was mixed, heated, and transported, causing also dermal contact with their
8 mouths, throats, esophagi, and lungs. Defendants are also responsible for a route of
9 exposure of dermal contact due to touching the Asphalt, or Asphalt products, with their
10 bare skin, including Hot Mix Asphalt. Exposures have occurred in the California
11 counties whose District Attorneys received copies of the operative notices.
12
13

14 52. For each such type and means of exposure, the violators have exposed and are continuing
15 to expose the above referenced persons to:
16

17 **CARCINOGENS:** Benz[a]anthracene; Chrysene; Toluene; diisocyanate;
18 Formaldehyde (gas); 5-Methylchrysene; Nickel and Certain Nickel Compounds;
19 Dichloromethane (Methylene Chloride); Benzene; Lead and Lead Compounds;
20 Benzo[b]flouranthene; Benzo[k]flouranthene; Benzo[a]pyreneIndeno[1,2,3-cd]; pyrene;
21 Acetaldehyde; Beryllium and Beryllium compounds; Arsenic (inorganic arsenic
22 compounds); Cadmium and Cadmium compounds; Chromium (hexavalent compounds);
23 Tetrachloroethylene (Perchloroethylene); Trichloroethylene; ChryseneDibenz[a,h];
24 anthracene; Carbazole; Dibenzo[a,i]pyrene; Dibenzo[a,e]pyrene; Dibenz[a,j]acridine;
25 Dibenzo[a,h]pyrene; Dibenzo[a,l]pyrene; Acetaldehyde; Benz[a]anthracene; 1,3
26
27
28

1 Butadiene; Diesel Engine Exhaust; Silica, crystalline (airborne particles of respirable
2 size)

3 **REPRODUCTIVE TOXINS:** Toluene; Carbon Disulfide; Benzene; Lead; Mercury and
4 Mercury compounds; Arsenic (inorganic oxides); Cadmium; Methyl Chloride
5

6 53. Each Proposition 65-Listed Chemical listed above first appeared on the Governor's
7 Proposition 65 list more than twenty months before Plaintiff sent a Proposition 65 60-
8 Day Notice of intent to sue to each respective named defendant. Therefore, each
9 Proposition 65-Listed Chemical was subject to Proposition 65 warning requirements at
10 the times of the exposures alleged herein.
11

12 54. For the past several years, both the Attorney General as well as Plaintiff have
13 investigated and prosecuted Asphalt Paving entities as an industry for alleged violations
14 of Proposition 65. Plaintiff and its counsel poured and continue to pour significant
15 resources, including time, money, and energy, in trying to bring all members of the
16 Asphalt Paving Industry in compliance with Proposition 65. In fact, the Attorney
17 General and Plaintiff co-litigated a previous action that resulted in a universal settlement
18 reached with over 100 Asphalt Paving entities. That settlement had an extensive opt-in
19 period which allowed all Paving entities, including these defendants, to join the
20 settlement and end not only their continual violations of Proposition 65, but also their
21 potential liabilities for alleged violations of the statute. Accordingly, these defendants
22 have had plenty of time and opportunities to end their violations of Proposition 65 and
23 come into compliance with the law.
24
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27 55. Instead, these defendants flouted the various opportunities they had to comply with
28 Proposition 65, and chose instead not to participate in a win-win settlement agreement

1 offered by both the Attorney General and CAG. The settlement these defendants chose
2 not to participate in would have benefited all parties involved, in that it would have
3 required defendants to significantly reduce both their employees' as well as the public's
4 exposures to deadly chemicals, and would have obligated these defendants to post the
5 required warnings. By choosing to continue their violations, these defendants have
6 significantly enlarged their potential liabilities for violating Proposition 65.
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12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff in the FIRST CAUSE OF ACTION demands against each defendant as
14 follows:

- 15 1. A permanent injunction pursuant to Health and Safety Code section 25249.7, subdivision (a),
16 and the equitable powers of the court;
- 17 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b) in the amount
18 of \$2,500 per day per violation;
- 19 3. Order to disgorge or pay restitution in an amount sufficient to restore to any person in interest
20 any money or property that Defendants may have acquired by means of violations set forth
21 herein and to prevent defendants' future use of such violations, pursuant to the equitable
22 powers of the court;
- 23 4. Costs of suit;
- 24 5. Reasonable attorney's fees and costs; and
- 25 6. Any further relief that the court may deem just and equitable.
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1 Dated: December 27, 2007

2 YEROUSHALMI & ASSOCIATES

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4 

5 ~~Reuben Yeroushalmi~~
6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.

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